IN THE MATTER OF

BEST QUILTING CORP. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket C-1281. Complaint, Jan. 2, 1968—Decision, Jan. 2, 1968

Consent order requiring a Palisades Park, N.J., fabric manufacturer to cease misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Best Quilting Corp., a corporation, and Charles Shalhoub, Joseph Shalhoub and Eugenia Shalhoub, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Best Quilting Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey.

Individual respondents Charles Shalhoub, Joseph Shalhoub and Eugenia Shalhoub, are officers of said corporate respondent. They formulate, direct and control the acts, policies and practices of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products with their office and principal place of business located at 141 Commercial Avenue, Palisades Park, New Jersey.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain quilting materials stamped, tagged, labeled, or otherwise identified as containing "50/50 wool," whereas in truth and in fact, said wool products contained substantially different amounts of woolen fibers and other fibers than represented.

PAR. 4. Certain of said wool products were further misbranded in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain quilting materials with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers located in various other States of the United States and maintain, and at all times mentioned herein, have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondents in the course of conduct of their business, as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the fiber content of their said products.

Among such misrepresentations, but not limited thereto, were statements representing the fiber content thereof as "50/50 wool" whereas in truth and fact the product contained substantially different fibers and amounts of fibers than represented.

PAR. 8. The acts and practices set out in Paragraph Seven have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Best Quilting Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 141 Commercial Avenue, in the city of Palisades Park, State of New Jersey.

Respondents Charles Shalhoub, Joseph Shalhoub and Eugenia Shalhoub are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Best Quilting Corp., a corporation, and its officers, and Charles Shalhoub, Joseph Shalhoub and Eugenia Shalhoub, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Best Quilting Corp., a corporation, and its officers, and Charles Shalhoub, Joseph Shalhoub and Eugenia Shalhoub, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of quilting materials or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in quilting materials or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

A & R AGENCY, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8716. Complaint, Oct. 13, 1966—Decision, Jan. 3, 1968

Order requiring two Chicago, Ill., collection agencies to cease misrepresenting the extent or character of the circulation of any publication, placing unauthorized advertising therein, and billing anyone for such advertising without prior agreement.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that A & R Agency, Inc., a corporation and Elmer Reynolds, Jr., Louis S. Bourjaily, Jr., and Frank Sacks, individually and as officers of said corporation, and Central Collection Agency, a partnership, and Louis S. Bourjaily, Sr., Paul Bourjaily and Ruth Bourjaily, individually and as partners trading and doing business as Central Collection Agency, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent A & R Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 223 West Washington Street, in the city of Chicago, State of Illinois. Said corporate respondent at times also trades and does business under the name of Associated Advertisers of America.

Respondents Elmer Reynolds, Jr., Louis S. Bourjaily, Jr., and Frank Sacks are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Central Collection Agency is a partnership with its principal office and place of business also located at 223 West Washington Street, in the city of Chicago, State of Illinois.

Respondents Louis S. Bourjaily, Sr., Paul Bourjaily and Ruth Bourjaily, are individuals and partners trading and doing business as Central Collection Agency. Said individual respondents formulate, direct and control the acts and practices of respondent Central Collection Agency. The address of all the individual respondents is the same as that of the respondent Central Collection Agency.

All of the aforesaid respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the solicitation of advertisements to be published in a number of newspapers, magazines, and other publications and in the collection of past due and allegedly past due accounts arising out of their said business.

PAR. 3. In the course and conduct of their business, respondents engage in extensive commercial intercourse among the various States of the United States. By long distance telephone and other means, respondents contact prospective purchasers of advertising space in States other than the State of Illinois and seek to sell advertising space to such persons. Respondents transmit through the United States mails to such persons, letters, invoices and other business communications and receive from them letters, bank checks and other instruments of a commercial nature. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents and their agents or representatives contact prospective purchasers of advertising space by telephone and other means and seek to induce them to purchase advertising space in certain publications among which are the Abendpost, Travel and Sports World Magazine and many other newspapers and periodicals.

In the course of such solicitations, respondents and respondents' agents and representatives, have made numerous statements regarding the character and extent of circulation of the individual publications. For example: That the Abendpost has a circulation in excess of 60,000, 100,000 or 200,000; that the Travel and Sports World Magazine has a circulation of 85,000.

PAR. 5. In truth and in fact, the various statements and representations made by respondents and respondents' agents and representatives regarding the character and extent of the circulation of said publica-

tions were and are false and exaggerated. The circulation of the Abendpost is substantially less than 60,000; the circulation of the Travel and Sports World Magazine is substantially less than 85,000, and the circulations of the other publications are substantially less than as represented.

Therefore, the statements and representations set forth in Paragraph Four hereof were, and are, false, misleading and deceptive.

PAR. 6. In the course and conduct of their business, respondents have also engaged in the unfair and deceptive practice of placing advertisements of various persons and firms in various publications without having received authorization from such persons or firms. Respondents have in other instances obtained authorization from persons or firms for publication of advertisements but have published such advertisements for a period of time in excess of that which was authorized. Respondents have then sought to exact payment from said persons and firms for such wholly and partly unauthorized advertisements.

PAR. 7. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of advertising space in newspapers, magazines and other publications.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead prospective advertisers into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of advertising space by reason of said erroneous and mistaken belief. The unfair and deceptive practice engaged in by respondents of publishing wholly and partly unauthorized advertisements has subjected firms and individuals to harassment and unlawful demand for payment of nonexistent debts.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Robert J. Hughes and *Mr. Mario V. Marabelli* supporting the complaint.

Turner and Hunt, Chicago, Ill., by *Mr. Frederick W. Turner, Jr.*, *Lorinczi & Weiss*, Milwaukee, Wis., by *Mr. George G. Lorinczi* for respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

OCTOBER 24, 1967

The Federal Trade Commission issued its complaint against respondents on October 13, 1966, charging them with violations of Section 5 of the Federal Trade Commission Act. The respondents filed an answer in which they admitted certain allegations of the complaint but denied that they had violated Section 5 of the Federal Trade Commission Act.

After prehearing conferences were held and prior to the time of the commencement of formal proceedings, the respondents, by their counsel, on October 12, 1967, filed a substitute answer in which they stated that for the purposes of disposing of this proceeding, and for no other purpose, the respondents admit all of the allegations of the complaint and submit and consent to the entry of an order in the form previously proposed by the Commission in its complaint. Respondents also stated in their substitute answer that it was filed in lieu of and superseding the answers previously filed by them on November 28, 1966, and March 15, 1967.

This matter is before the hearing examiner for final consideration of the complaint and substitute answer, and the hearing examiner, having considered these documents, makes the following findings of fact, conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Respondent A & R Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 223 West Washington Street, in the city of Chicago, State of Illinois. Said corporate respondent at times also trades and does business under the name of Associated Advertisers of America.

Respondents Elmer Reynolds, Jr., Louis S. Bourjaily, Jr., and Frank Sacks are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Central Collection Agency is a partnership with its principal office and place of business also located at 223 West Washington Street, in the city of Chicago, State of Illinois.

Respondents Louis S. Bourjaily, Sr., Paul Bourjaily and Ruth Bourjaily are individuals and partners trading and doing business as Central Collection Agency. Said individual respondents formulate, direct and control the acts and practices of respondent Central Col-

lection Agency. The address of all the individual respondents is the same as that of the respondent Central Collection Agency.

All of the aforesaid respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

2. Respondents are now, and for some time last past have been, engaged in the solicitation of advertisements to be published in a number of newspapers, magazines, and other publications and in the collection of past due and allegedly past due accounts arising out of their said business.

3. In the course and conduct of their business, respondents engage in extensive commercial intercourse among the various States of United States. By long distance telephone and other means, respondents contact prospective purchasers of advertising space in States other than the State of Illinois and seek to sell advertising space to such persons. Respondents transmit through the United States mails to such persons, letters, invoices and other business communications and receive from them letters, bank checks and other instruments of a commercial nature. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, respondents and their agents or representatives contact prospective purchasers of advertising space by telephone and other means and seek to induce them to purchase advertising space in certain publications, among which are the Abendpost, Travel and Sports World Magazine and many other newspapers and periodicals.

In the course of such solicitations, respondents and respondents' agents and representatives have made numerous statements regarding the character and extent of circulation of the individual publications. For example: That the Abendpost has a circulation in excess of 60,000, 100,000 or 200,000; that the Travel and Sports World Magazine has a circulation of 85,000.

5. In truth and in fact, the various statements and representations made by respondents and respondents' agents and representatives regarding the character and extent of the circulation of said publications were and are false and exaggerated. The circulation of the Abendpost is substantially less than 60,000; the circulation of the Travel and Sports World Magazine is substantially less than 85,000, and the circulation of the other publications are substantially less than as represented.

Therefore, the statements and representations set forth in Paragraph Four hereof were, and are, false, misleading and deceptive.

6. In the course and conduct of their business, respondents have also engaged in the unfair and deceptive practice of placing advertisements of various persons and firms in various publications without having received authorization from such persons or firms. Respondents have in other instances obtained authorization from persons or firms for publication of advertisements but have published such advertisements for a period of time in excess of that which was authorized. Respondents have then sought to exact payment from said persons and firms for such wholly and partly unauthorized advertisements.

7. In the conduct of their business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of advertising space in newspapers, magazines and other publications.

CONCLUSIONS

1. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead prospective advertisers into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of advertising space by reason of said erroneous and mistaken belief. The unfair and deceptive practice engaged in by respondents of publishing wholly and partly unauthorized advertisements has subjected firms and individuals to harassment and unlawful demand for payment of nonexistent debts.

2. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That respondents A & R Agency, Inc., a corporation, also trading and doing business as Associated Advertisers of America or under any other name or names, and its officers and Elmer Reynolds, Jr., Louis S. Bourjaily, Jr., and Frank Sacks, individually and as officers of said corporation; and Central Collection Agency a partnership and Louis S. Bourjaily, Sr., Paul Bourjaily and Ruth Bourjaily, individually and as partners, trading and doing business as Central Collection Agency or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or

other device, in connection with the offering for sale or sale of advertising space in newspapers, magazines or any other publication, and in connection with the collection of or attempting to collect past due or allegedly past due accounts arising out of the publication of any advertisement, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that the circulation, whether paid or unpaid, of any newspaper, magazine or other publication, is any stated amount: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said circulation was as stated.

(2) Misrepresenting in any manner the extent or character of the circulation or readership of any publication for which an advertisement is being solicited.

(3) Placing, printing or publishing, or causing to be placed, printed or published, any advertisement on behalf of any person, firm or corporation in any publication without a prior authorization, order or agreement to purchase said advertisement.

(4) Printing or publishing or causing to be printed or published, any advertisement for a number of insertions in excess of the number of insertions authorized by the person, firm or corporation on whose behalf the advertisement has been printed or published.

(5) Sending or causing to be sent, bills, letters or notices to any person, firm or corporation with regard to any advertisement which has been or is to be printed, inserted or published on behalf of said person, firm or corporation, or in any other manner seeking to exact payment for any such advertisement, without a prior and specific authorization, order or agreement to purchase said advertisement.

It is further ordered, That respondents original answers filed on November 28, 1966, and March 15, 1967, are withdrawn and the substitute answer filed October 12, 1967, be substituted therefor.

Final Order

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 3rd day of January, 1968, become the decision of the Commission.

It is further ordered, That respondents A & R Agency, Inc., a corporation and Elmer Reynolds, Jr., Louis S. Bourjaily, Jr., and Frank Sacks, individually and as officers of said corporation, and Central Collection Agency, a partnership and Louis S. Bourjaily, Sr., Paul Bourjaily and Ruth Bourjaily, individually and as partners trading and doing business as Central Collection Agency, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by each respondent named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

UNITED FELT COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-1282. Complaint, Jan. 3, 1968—Decision, Jan. 3, 1968

Consent order requiring a Chicago, Ill., textile manufacturer to cease misbranding its textile fiber products and failing to maintain required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reasons to believe that United Felt Company, a corporation, and Arnold Willis, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent United Felt Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois.

Respondent Arnold Willis is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent.

Respondents are engaged in the manufacture and sale of textile fiber products, including batting, with their office and principal place of business located at 3729 South St. Louis Avenue, Chicago, Illinois.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which had been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Indentification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amounts of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were batting materials which were represented to be 50 percent Acrylic, 50 percent Unknown Synthetic Fibers and 95 percent Acrylic, 5 percent Other Fibers whereas, in truth and in fact, such products contained substantially different amounts of fibers other than as represented.

PAR. 4. Certain of the textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto was batting with labels which failed to disclose the true percentage of the fibers present by weight.

PAR. 5. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 6. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent United Felt Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3729 South St. Louis Avenue, Chicago, Illinois.

Respondent Arnold Willis is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents United Felt Company, a corporation, and its officers, and Arnold Willis, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondents, as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

L'ARGENE PRODUCTS COMPANY, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8717. Complaint, Oct. 13, 1966—Decision, Jan. 5, 1968

Order requiring a New York City distributor of perfumes and other toilet preparations, to cease simulating by letters or symbols the brand names of competitors' products and misrepresenting that its toilet preparations have been endorsed by any person, family, or organization.

COMPLAINT *

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that L'Argene Products Company, Inc., a corporation, also doing business as M.S., M.S. Products, M.S. Products Company, and M.S. Prod. Distr., and Joseph H. Somlo, and Magda Somlo (also known as Mrs. Joseph H. Somlo and as Margaret Somlo), individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent L'Argene Products Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 106 East 23rd Street, in the city of New York, State of New York.

Respondent Joseph H. Somlo and his wife, Magda Somlo, are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of toilet preparations, including perfumes and colognes, to the general public and to wholesalers, distributors, jobbers and retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products,

*Reported as amended by Hearing Examiner's order of Jan. 24, 1967, by clarifying the second sentence of Paragraph 4(c).

when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business in advertising, offering for sale, sale and distribution of their said products, respondents have engaged in the following practices:

(a) By using bottles, boxes and other containers and display cards on which various letters and terms such as "A"; "C"; "Mark V" and "Mark 5"; "MS"; "S"; "T"; and "W" and "WS" are imprinted or otherwise labeled; through the use of photographs and advertising circulars depicting their said products so labeled or imprinted; and through oral statements made to wholesalers, distributors, jobbers, retailers and others, respondents have represented, directly and indirectly, that said products so labeled or imprinted are, respectively, the well-known "Arpege" perfume by Lanvin Parfums, Inc., or a copy thereof; the well-known "Chanel" or "Chanel No. 5" by Chanel Industries, Inc., or a copy thereof; the well-known "My Sin" perfume by Lanvin Parfums, Inc., or a copy thereof; the well-known "Shalimar" perfume by Guerlain, Inc., or a copy thereof; the well-known "Tabu" perfume by Dana Perfumes Corporation, or a copy thereof; the well-known "White Shoulders" perfume by Evyan Perfumes, Inc., or a copy thereof. In truth and in fact respondents' said products are not any of the well-known perfumes mentioned, and none of respondents' said products are copies of any of such well-known perfumes.

(b) By packaging 1½ oz. containers of their said products in boxes bearing 2½ oz. labels and through the use of boxes bearing two or more conflicting weight or size designations, such as use of 1½ oz. and 2 oz. labels on one box and the use of 3½ oz. and 4 oz. labels on one box, respondents have misrepresented the amount of said products contained in such boxes.

(c) By labeling and advertising that each of several of their perfumes is "The Gabor's Family Favorite Perfume," respondents have represented that each such perfume is THE favorite perfume of the Gabor family. In truth and in fact none of the perfumes so represented is THE favorite of any or all of the members of the Gabor family.

(d) Through use of the words "Cut Crystal" and similar expressions in advertising of certain of respondents' products, respondents have misrepresented that the containers for such products are of cut crystal.

Therefore, respondents' practices and representations described in Paragraph Four hereinabove, were and are, unfair, false, misleading and deceptive.

PAR. 5. By the aforesaid practices, respondents mislead and deceive the public as to the identity and manufacture of respondents' said products as well as the quality and quantity of said products and the containers therefor, and place in the hands of wholesalers, retailers and others the means and instrumentalities by and through which they may likewise mislead and deceive the public.

PAR. 6. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with the companies named in Paragraph Four (a) hereinabove, and with corporations, firms and individuals in the sale of toilet preparations of the same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Comission Act.

Mr. Howard S. Epstein supporting the complaint.

Mr. Solomon H. Friend, Bass & Friend, New York, N.Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

MAY 19, 1967

Preliminary Statement

The complaint herein was filed on October 13, 1966, and charges respondents with unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Specifically, the complaint raises four issues which are set forth in paragraphs 4(a) through 4(d) of the complaint. Paragraph Four of the complaint alleges as follows:

PARAGRAPH FOUR: In the course and conduct of their business in advertising, offering for sale, sale and distribution of their said products, respondents have engaged in the following practices:

(a) By using bottles, boxes and other containers and display cards on which various letters and terms such as "A"; "C"; "Mark V" and "Mark 5"; "MS"; "S"; "T"; and "W" and "WS" are imprinted or otherwise labeled; through the use of photographs and advertising circulars depicting their said products so labeled or imprinted; and through oral statements made to wholesalers, distributors, jobbers, retailers and others, respondents have represented, directly and indirectly, that said products so labeled or imprinted are, respectively, the well-known "Arpege" perfume by Lanvin Parfums, Inc., or a copy thereof; the well-known "Chanel" or "Chanel No. 5" by Chanel Industries, Inc., or a copy thereof; the well-known "My Sin" perfume by Lanvin Parfums, Inc., or a copy thereof; the well-known "Shalimar" perfume by Guerlain, Inc., or a copy thereof; the well-known "Tabu" perfume by Dana Perfumes Corporation, or a copy thereof; the well-known "White Shoulders" perfume by Evyan Perfumes, Inc., or a copy thereof. In truth and in fact respondents' said products are not any of the well-known perfumes mentioned, and none of respondents' said products are copies of any of such well-known perfumes.

(b) By packaging 1½ oz. containers of their said products in boxes bearing 2½ labels and through the use of boxes bearing two or more conflicting weight or size designations, such as use of 1½ oz. and 2 oz. labels on one box and the use of 3½ oz. and 4 oz. labels on one box, respondents have misrepresented the amount of said products contained in such boxes.

(c) By labeling and advertising that each of several of their perfumes is "The Gabor's Family Favorite Perfume," respondents have represented that each such perfume is THE favorite perfume of the Gabor family. In truth and in fact each such perfume is at most no more than ONE OF THE favorite perfumes of the Gabor family.

(d) Through use of the words "Cut Crystal" and similar expressions in advertising of certain of respondents' products, respondents have misrepresented that the containers for such products are of cut crystal.

Therefore, respondents' practices and representations described in Paragraph Four hereinabove, were and are, unfair, false, misleading and deceptive.

It thus appears that in paragraph 4(a), the complaint charges that through the use of bottles, boxes and containers bearing various letters and numerals, singly and in combination, the respondents have represented that said initials and numerals, in and of themselves, identify certain well-known and nationally advertised perfumes; and that through the use of such initials, and oral statements made to wholesalers, distributors, jobbers, retailers and others, respondents have represented that its products labeled or imprinted with initials and numerals are the well-known and nationally advertised perfumes or copies thereof; whereas in truth and in fact, respondents' products are not any of the well-known perfumes and none of respondents' products

are copies of any of the well-known perfumes. In essence, paragraph 4(a) of the complaint poses two issues: (1) whether the use of initials and numerals, singly and in combination, imprinted upon respondents' products, in and of themselves, constitute representations that respondents' products are the well-known and nationally advertised perfumes, to wit: Arpege by Lanvin, Chanel No. 5 by Chanel Industries, My Sin by Lanvin, Shalimar by Guerlain, Tabu by Dana, and White Shoulders by Evyan; and (2) whether by the use of initials and numerals, together with oral statements and/or written advertising material, respondents represented that its perfumes are products of the well-known perfumes mentioned or copies thereof.

With respect to paragraph 4(a) of the complaint, respondent's answer has denied that the use of initials in and of themselves, imprinted upon respondents' products, identify any of the well-known and nationally advertised perfumes; has denied the making of oral statements and/or the use of photographs and advertisements to represent that respondents' products are the well-known and nationally advertised perfumes aforementioned or a copy thereof, or that respondents' products are confusingly similar to any of the said nationally advertised perfumes or any other nationally advertised perfumes. Respondents' answer further alleges that respondents have used initials to identify its various fragrances and that said initials have been used in a manner which clearly and conspicuously reveals in immediate connection therewith the actual name of the manufacturer, compounder and/or distributor of said products, to wit: the corporate respondent and/or M.S. Products Company. Respondents' answer further alleges that any prohibition against the use of initials to identify respondents' fragrances would be inappropriate, illegal and contrary to the public interest since the initials, numerals and designations used by respondents are in the public domain because they are nothing more than letters of the alphabet and numerals comprising a part of the English language.

Paragraph 4(b) of the complaint, in essence, poses the issue as to whether respondents have misrepresented the amount of the contents of its products. Respondents' answer denies such misrepresentations and, as a matter of fact, during the course of the hearings herein, complaint counsel withdrew this charge for lack of proof (Tr. 92). The issue raised by paragraph 4(b) of the complaint has thus been removed from this case.

Paragraph 4(c) of the complaint [1] poses the issue as to whether certain of respondents' products labeled and advertised as "The Gabor's

[1] Leave to amend Paragraph 4(c) of the complaint was granted by order of the hearing examiner dated January 24, 1967.

Family Favorite Perfume" have been misrepresented as such in that, in truth and in fact, none of respondents' perfumes is THE favorite perfume of any or all of the members of the Gabor family. Respondents' answer denies the charges of misrepresentation with respect to its Gabor perfume and alleges that the reference to "The Gabor's Family Favorite Perfume" was made pursuant to contractual agreements with the Gabor family, *i.e.*, Jolie Gabor, Eva Gabor, Magda Gabor, and Zsa Zsa Gabor.[2]

Paragraph 4(d) of the complaint poses the issue as to whether respondents have misrepresented that certain of the containers for respondents' products are cut crystal. At the hearing this issue was clarified and sharpened so as to indicate that the only issue was whether respondents' containers were cut, complaint counsel's witness having conceded that respondents' containers were, in fact, crystal. Respondents' answer alleged that respondents' containers were, in fact, cut crystal and had been sold to respondents as such by a nationally recognized corporation.

The hearing examiner has carefully considered the proposed findings of fact and conclusions supplemented by briefs of complaint counsel, counsel for respondents, and such proposed findings and conclusions if not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

Findings of Fact

1. Respondent L'Argene Products Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 106 East 23rd Street, New York, New York (Answer, par. 1, p. 1).

2. Respondent Joseph H. Somlo and his wife, Magda Somlo, are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent (Answer, par. 1, p. 1; Tr. 148–50).

3. Respondents are now, and for some time past have been, engaged in the advertising, offering for sale, sale, and distribution of toilet

[2] As subsequently discussed herein, this issue, for all intents and purposes, has likewise been removed as a contested issue in this case. Complaint counsel agreed to the receipt in evidence of RXs 7 through 11, which specifically demonstrate that respondents' reference to the Gabor family was expressly authorized by the Gabors. Complaint counsel also stipulated that if the members of the Gabor family had testified, they would have confirmed that respondents' perfumes were in truth and in fact one of the favorite perfumes of the Gabor family and each member thereof, *i.e.*, *a* favorite perfume of the Gabor family, rather than *the* favorite perfume of the Gabor family.

preparations, including perfumes and colognes, to the general public and to wholesalers, distributors, jobbers, and retailers for resale to the public (Answer, par. 2, p. 1; CX 7, 8, 26, 36, 73 & 74; Tr. 174–204, 188–90).

4. In the course and conduct of their business, respondents now cause, and for some time past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act (Answer, par. 3, pp. 1–2; Tr. 168–69, 172–73; CX 20).

5. In the course and conduct of their business in advertising, offering for sale, sale and distribution of their said products, respondents have engaged in the practice of using bottles, boxes and other containers and display cards on which various letters and terms, such as "A"; "C"; "Mark V" and "Mark 5"; "MS"; "S"; "T"; and "W" and "WS" are imprinted or otherwise labeled (Tr. 155, 157, 159; CXs 1–2, 5–6, 11, 17, 19, 28, 38–41, 43–46, 48–49, 52, 58–65, 70–71 & 73).

6. In the course and conduct of their business in advertising, offering for sale, sale and distribution of their said products, respondents have engaged in the practice of using photographs and advertising circulars depicting their said products so labeled or imprinted, and in making oral statements in connection therewith to wholesalers, distributors, jobbers, retailers and others, have represented, directly and indirectly, that said products so labeled or imprinted are, respectively, the well-known "Arpege" perfume by Lanvin Parfums, Inc., or a copy thereof, the well-known "Chanel" or "Chanel No. 5" by Chanel Industries, Inc., or a copy thereof, the well-known "My Sin" perfume by Lanvin Parfums, Inc., or a copy thereof, the well-known "Shalimar" perfume by Guerlain, Inc., or a copy thereof, the well-known "Tabu" perfume by Dana Perfumes Corporation or a copy thereof, the well-known "White Shoulders" perfume by Evyan Perfumes, Inc., or a copy thereof (Tr. 398–402).[3]

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[3] Mr. Aaron Freedman testified that a representative of respondent L'Argene company told him that the letters "C," "MS," "WS" and "A" were copies of "Chanel," "My Sin," "White Shoulders" and "Arpege" perfumes. In furtherance of this oral representation, the L'Argene representative wrote this information for Mr. Freedman on the invoice for L'Argene products which Mr. Freedman purchased (Tr. 542–44; CX 20).

Mr. Herbert Belfer testified that when he was at a trade show in New York City and first bought respondents' perfumes, he was told at the L'Argene booth that the initial perfumes were the exact scents of Arpege, My Sin, White Shoulders, and Chanel (Tr. 408–13).

These witnesses further testified that they made representations for L'Argene initial perfumes to their customers substantially the same as had been made to them by the L'Argene representatives (Tr. 412, 550).

7. None of respondents' initial perfumes are copies of any such well-known perfumes as set forth in Finding No. 6 (Answer, par. 4, p. 2; Tr. 630–48, 650).

8. In the course and conduct of their business in advertising, offering for sale, sale and distribution of their said products, respondents have engaged in the practice of representing, labeling and advertising that each of several of their perfumes is "The Gabor's Family Favorite Perfume," when, in fact, none of the perfumes so represented is THE favorite of any or all of the members of the Gabor family (Tr. 432–38; P.H.C. Tr. 4–31; RX 6–11; CX 72).[4]

9. Complaint counsel, during the course of the hearings herein, withdrew the allegation concerning conflicting weights and weight labels on respondents' products (complaint, par. 4(b), p. 17) and no finding is therefore made in this connection (Tr. 91–92).

10. In the course and conduct of their business in advertising, offering for sale, sale and distribution of their said products, respondents have engaged in the practice of using the words "Cut Crystal" in advertising certain of their products, and have misrepresented that the containers for such products are of cut crystal.[5]

11. By the aforesaid practices respondents mislead and deceive the public as to (1) the identity of said products; (2) the quality of the containers therefor; and (3) endorsements as to such products (Tr. 340, 392–97, 442–50, 461–62, 499, 564–67; CX 10, 10e, 15, 21–22, 31–33).

12. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with the companies named in Finding No. 6, *supra*, and with other corporations, firms, and individuals in the sale of toilet preparations of the same general kind and nature as those sold by respondents (RX 15).

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[4] Counsel stipulated that if the Gabors testified they would state the perfumes to be *a* favorite perfume not *the* favorite.

[5] Mr. Eugene Henn testified at length concerning whether respondents' glass containers are "cut crystal." Mr. Henn's opinions and observations were based on his more than 40 years' experience in the field of glass, especially cut crystal wares (Tr. 833–42, 878–79). In summary, Mr. Henn described what cut crystal is, using examples he brought with him to the hearings. His explanation was that cut crystal is a crystal object that is marked or cut into by a hand operation. The crystal object may have been produced in a mold, but to be called "cut crystal" there has to be hand cutting operations performed on the crystal object (Tr. 846–48, 850, 895, 897). However, respondents' containers are all molded and the design work or markings thereon are part of the machine dies (Tr. 858, 891, 895, 896, 911). See the colloquy between the hearing examiner and Mr. Henn to the following effect (Tr. 901):

"H.E.: Could entirely molded crystal be called cut crystal in any sense of the word?
"Henn: Never."

CONCLUSIONS

1. Respondents' practices and representations as described in Findings No. 6 through 11, *supra*, were and are unfair, false, misleading and deceptive.

2. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

3. The acts and practices of respondents were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

NATURE OF ORDER

The hearing examiner's attention has been directed to *Panat Jewelry Co., Inc.*, Dkt. No. 8660, decided by the Commission only a few weeks ago on February 8, 1967 [71 F.T.C. 99]. In that case, the respondents had not only used initials, but in addition, had packaged their scents to represent genuine perfumes, had preticketed their scents with a price comparable to the price of genuine perfumes, had used a depiction of the Eiffel Tower and the French flag to suggest that the perfumes were the popular imported brands and had made repeated oral and written representations to its dealers that its scents were imitations of the genuine perfumes whose initials were shown on the respondents' packages. Even under such compelling facts, however, the only order issued by the hearing examiner and adopted by the Commission was an order prohibiting the use of any letters, numerals, or symbols associated with nationally advertised perfumes without clearly and conspicuously revealing, in immediate conjunction therewith, the actual trade name of the manufacturer of said products.

Respondents' counsel urges the *Panet* decision makes it quite clear that the Commission itself recognizes the patent impropriety of any order which absolutely prohibits the use of letters and numerals of the English language.

Respondents' counsel further urges that the *Panet* case is an *a fortiori* ruling supporting respondents' contention herein that the use

of letters, together with the actual trade name of the manufacturer or distributor of the products, is not deceptive.

However, complaint counsel opposes this theory as follows:

> The only way the deceptive and misleading use of the letters can be stopped is to prohibit the respondents from using the letters on their products. Thus, misrepresentations by respondents and by third parties who purchase such products from respondents can be permanently and effectively halted. Respondents have no vested interest or right to the use of letters to designate their products, and therefore the Commission can properly prohibit the use of the initials if they are used as a means of deception.

The answer to the foregoing is that *no one* has a vested interest in letters of the alphabet (including respondents' competitors) unassociated with some trademark design. The cases cited by complaint counsel are not in point since they involve meaningful, or trade, name simulations that are clearly misrepresentations in and of themselves. The fact that certain letters facilitate misrepresentation does not mean that their use in and of itself is misrepresentative. In fact, in this case, in the absence of affirmative misrepresentative statements it would be difficult to confuse respondents' products with the considerably more expensive brands known to the public. The relief established by the Commission in the *Panat* case, therefore, appears appropriate here, particularly in context with the fact that there has been no consumer testimony indicating that anyone has been or could be deceived by the use of the letters unaugmented by affirmative misrepresentations, or that the public is unaware of the trade names of perfume manufacturers of well-known brands.

Furthermore, the hearing examiner is not at all impressed with complaint counsel's instrumentality theory. This does have some significance under common law tort concepts, or as evidence of conspiratorial participation, where the instrumentality put into the hands of another may reasonably be expected to be dangerous, or a part of the conspiratorial act. Its relationship to this deception, however, seems rather obscure. Even if applied, there is no evidence of the fact that the public could reasonably be expected to be deceived by the use of the so-called instrumentality (*i.e.*, the letters of the alphabet used to identify fragrances) in the absence of a direct misrepresentation as to the products themselves which the use of the letters facilitates. The letters themselves, nevertheless, are not the proximate cause of the deception. Therefore, an order enjoining the use of such letters or any letters in the alphabet would be too broad in scope to be realistic in the absence of product-word simulation or trademark simulation. Such latter simulation should, of course, be directly enjoined.

Applied to the facts here, the Commission's order in the *Panat* case seems more appropriate than sections one through six of complaint counsel's proposed order. The Commission's order in that case prohibits the use of:

> any letters, numerals or symbols that are associated with or otherwise suggestive of nationally advertised or well-known perfumes, toilet waters, or related products in the labeling or advertising of respondents' products without clearly and conspicuously revealing in immediate conjunction therewith, the actual trade name of the manufacturer of said products.

Although the order issued by the Commission in the *Panat* case may not avoid all third-party misrepresentations concerning the products at issue, this is true with regard to almost any reasonable order that might be issued against a respondent to avoid a possible deception of their products by unscrupulous persons over whom the product manufacturer has no control. The Commission's approach to this problem in the *Panat* case has been especially realistic in issuing an order that will discourage rather than facilitate misrepresentation as found here by requiring that the respondent clearly and unequivocally denote who manufactures the product. The public is not devoid of any responsibility in ascertaining what product manufacturer it is dealing with. Accordingly,

ORDER

It is ordered, That respondents L'Argene Products Company, Inc., a corporation, and its officers, and Joseph H. Somlo and Magda Somlo, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfume or other toilet preparations, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the letters A, C, MS, T, W, WS, or any other letters, numerals, or symbols either singly or in combination in the advertising or labeling of said perfumes, toilet waters or cosmetics, to designate or describe the kind or quality thereof without clearly and conspicuously revealing in immediate connection therewith the actual trade name of the manufacturer, compounder or distributor of said products.

2. Representing, directly or by implication that any of respondents' toilet preparations is, or is the same as, or a copy, or reproduction, or chemical reproduction of, products sold under the brand names "Arpege" or "My Sin" by Lanvin Parfums, Inc.;

"Chanel" or "Chanel No. 5" by Chanel Industries, Inc.; "Shalimar" by Guerlain, Inc.; "Tabu" by Dana Perfumes Corporation; "White Shoulders" by Evyan Perfumes, Inc.; or any other well-known or nationally advertised perfume or other toilet preparation.

3. Misrepresenting, directly or indirectly, that any of the perfumes or toilet preparations sold, distributed or offered for sale by respondents, is or are THE favorite of any person or family even if any perfume or toilet preparation is A favorite thereof; or falsely representing in any manner that any person, family, corporation or any other organization has given a testimonial, endorsement or recommendation concerning respondents' business or any of their said products.

4. Representing that molded glass or molded crystal containers are of cut glass, or cut crystal, or misrepresenting in any manner the quality of the containers used in bottling or packaging said products.

Opinion of the Commission

JANUARY 5, 1968

This matter is before the Commission on the appeal by complaint counsel from the hearing examiner's initial decision finding that respondents had engaged in various unfair and deceptive practices in commerce and in violation of Section 5 of the Federal Trade Commission Act.

Respondents are engaged in the sale and distribution of toilet preparations, including perfumes and colognes to the general public and to wholesalers, distributors, jobbers and retailers for resale to the public. The complaint charges that by labeling their products with certain initials, including "A," "C," "MS" and "WS," and through oral representations, respondents have represented that their products are the same as, or copies of, certain well-known perfumes, including "Arpege" by Lanvin Parfums, Inc.; "Chanel No. 5" by Chanel Industries, Inc.; "My Sin" by Lanvin Parfums, Inc.; and "White Shoulders" by Evyan Perfumes, Inc. The complaint also charges that respondents had placed in the hands of wholesalers, jobbers and retailers, the means by which they might mislead the public as to the quality and contents of their products.

The hearing examiner, concluding that the practices of respondents had a tendency to mislead and be deceptive, ordered respondents to refrain from using initials in the advertising and distribution of their

products without disclosing the trade name of the distributor in close conjunction with the initials. Respondents were also prohibited from representing, in any manner, that their products were the same as, or copies of, the nationally known perfumes named above.

Oral argument was waived and the appeal was submitted to the Commission on the briefs alone. Counsel supporting the complaint appealed solely on the ground that the order entered by the examiner is inadequate to prevent respondents from continuing their deception and that nothing short of an absolute prohibition against the use of any initials by respondents would be an adequate remedy.

Respondents argued that the record does not support a more stringent order and that the examiner's order is appropriate and in accord with past Commission action in adjudicated cases involving similar issues.[1]

The record supports the examiner's conclusion there was no deception *per se* in the use of initials. The misrepresentation found here occurred only when these labels were coupled with oral statements. The order prohibits use of initials without certain disclosures. It also bars representations, in any manner, that respondents' products are the same as, or copies of, any well-known perfumes.

We do not agree with complaint counsel's argument that the examiner erred in not including an "instrumentality" provision in his order. If it is not deceptive to use initials, we are hard pressed to see how respondents could be placing the means to deceive the public in the hands of their distributors by merely providing them with labeled products. The requested provision is unnecessary and inappropriate.

We think that the examiner's order is appropriate in this matter. The order proposed by him contains provisions which in our judgment are adequate to deal with the deception which is at the core of the present proceeding and to prohibit related misrepresentations which might be made in the future. Accordingly, we deny the appeal of counsel supporting the complaint and affirm the order of the hearing examiner in disposition of this matter.

Final Order

It is ordered. That respondents L'Argene Products Company, Inc., a corporation, and its officers, and Joseph H. Somlo and Magda Somlo, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any cor-

[1] It is noted that none of the cases cited by complaint counsel in support of his arguments were adjudicated.

porate or other device, in connection with the offering for sale, sale or distribution of perfume or other toilet preparations, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the letters A, C, MS, T, W, WS, or any other letters, numerals, or symbols, either singly or in combination, in the advertising or labeling of said perfumes, toilet waters or cosmetics, to designate or describe the kind or quality thereof without clearly and conspicuously revealing in immediate connection therewith the actual trade name of the manufacturer, compounder or distributor of said products.

2. Representing, directly or by implication that any of respondents' toilet preparations is, or is the same as, or a copy, or reproduction, or chemical reproduction of, products sold under the brand names "Arpege" or "My Sin" by Lanvin Parfums, Inc.; "Chanel" or "Chanel No. 5" by Chanel Industries, Inc.; "Shalimar" by Guerlain, Inc.; "Tabu" by Dana Perfumes Corporation; "White Shoulders" by Evyan Perfumes, Inc.; or any other well-known or nationally advertised perfume or other toilet preparation.

3. Misrepresenting, directly or indirectly, that any of the perfumes or toilet preparations sold, distributed or offered for sale by respondents, is or are THE favorite of any person or family even if any perfume or toilet preparation is A favorite thereof; or falsely representing in any manner that any person, family, corporation or any other organization has given a testimonial, endorsement or recommendation concerning respondents' business or any of their said products.

4. Representing that molded glass or molded crystal containers are of cut glass, or cut crystal, or misrepresenting in any manner the quality of the containers used in bottling or packaging said products.

It is further ordered, That respondents L'Argene Products Company, Inc., a corporation, and its officers, and Joseph H. Somlo and Magda Somlo, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist set forth herein.

IN THE MATTER OF

OLIVER BROTHERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION, THE WOOL PRODUCTS LABELING AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-1283. Complaint, Jan. 8, 1968—Decision, Jan. 8, 1968

Consent order requiring a Philadelphia, Pa., manufacturer of men's athletic wear to cease misbranding its wool products and deceptively advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Oliver Brothers, Inc., a corporation, and Irvin Segal, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Oliver Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 147 North 10th Street, Philadelphia, Pennsylvania.

Individual respondent Irvin Segal is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation including those hereinafter set forth and his office and principal place of business is the same as that of the corporate respondent.

Respondents are manufacturers of men's athletic wear.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool products" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent or meaning of Section 4(a)(1) of the Wool Products Labeling

Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were woolen jackets stamped, tagged, labeled, or otherwise identified as containing "All Reprocessed Wool," whereas in truth and in fact, said wool products contained substantially different fibers and amounts of fibers than as represented.

PAR. 4. Certain of said wool products were further misbranded in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain woolen jackets with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not stamped, tagged, labeled, or otherwise identified in accordance with the Rules and Regulations promulgated thereunder in that wool products were offered or displayed for sale or sold to purchasers or the consuming public and the required stamp, tag, label, or other mark of identification attached to the said wool product and the required information contained therein, was minimized, rendered obscure and inconspicuous, and placed so as likely to be unnoticed or unseen by purchasers and purchaser-consumers by reason of among others,

(a) Small indistinct type.

(b) Crowding, intermingling, or obscuring with designs, vignettes, or other written, printed or graphic matter, in violation of Rule 11 of the Rules and Regulations.

PAR. 6. The acts and practices of the respondents as set forth above in Paragraphs Three, Four and Five were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 8. Certain of said textile fiber products were falsely and deceptively advertised in that respondents, in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist, directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised by means of a "catalogue" distributed by respondents throughout the United States in that the true generic names of the fibers contained in such textile fiber products were not set forth in such catalogue.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber product were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following aspects:

A. Fiber trademarks were used in advertising textile fiber products without the full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

B. Fiber trademarks were used in advertising textile fiber products containing more than one fiber and such fiber trademarks did not

appear in the required fiber content information in immediate proximity and conjunction with the generic names of the fibers in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

PAR. 10. The acts and practices of the respondents as set forth in Paragraphs Eight and Nine were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent Oliver Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 147 North 10th Street, Philadelphia, Pennsylvania.

Respondent Irvin Segal is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Oliver Brothers, Inc., a corporation, and its officers, and Irvin Segal, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, delivery for shipment or shipment, in commerce, of wool products as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to character or amount of constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Affixing or placing the stamp, tag, label, or mark of identification required under the said Act or the information required by said Act and the Rules and Regulations promulgated thereunder, on wool products in such a manner as to be minimized, rendered obscure or inconspicuous or so as to be unnoticed or unseen by purchasers and purchaser-consumers, when said wool products are offered or displayed for sale or sold to purchasers or the consuming public.

It is further ordered, That respondents Oliver Brothers, Inc., a corporation, and its officers, and Irvin Segal, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of

any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from falsely and deceptively advertising textile fiber products by:

1. Making any representations, directly or by implication, as to fiber content of any textile fiber product in any written advertisment which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label, or other means of identification under Section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in an advertisement without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

MASTERCRAFT FURNITURE CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-1284. Complaint, Jan. 8, 1968—Decision, Jan. 8, 1968

Consent order requiring an Omaha, Nebr., furniture manufacturer to cease falsely representing its products as nationally advertised, preticketing its merchandise, making deceptive guarantees, and supplying others with means to deceive purchasers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Mastercraft Furniture Corporation, a corporation, and Julius Katzman and Maurice Katzman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceedings by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mastercraft Furniture Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 1111 North 13th Street, in the city of Omaha, State of Nebraska.

Respondents Julius Katzman and Maurice Katzman are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of furniture to retailers and dealers for resale to the public.

PAR. 3. In the course and conduct of their said business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Nebraska to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their furniture, the respondents have engaged in the practice of attaching, or causing to be attached, price tickets to their said furniture upon which certain price amounts are printed. Respondents have disseminated, or caused to be disseminated, price lists and catalogs and other forms of advertising in which certain amounts are shown as the retail prices of respondents' furniture. Said prices are represented as "Nationally advertised" on the price tags and in the said advertising material.

Respondents thereby represent, directly or by implication:

1. That said amounts are a good faith estimate of the actual retail price, which does not appreciably exceed the highest price at which substantial sales of respondents' furniture are made in respondents' trade area, and

2. That respondents' products and prices are nationally advertised.

PAR. 5. In truth and in fact:

1. Said prices appearing on the respondents' price tags and in their price lists, catalogs and other forms of advertising are not their good faith estimate of the actual retail prices at which substantial sales of respondents' furniture are and have been made in their trade area but appreciably exceed the highest price at which substantial sales are made in respondents' trade area.

2. Respondents do not advertise their products or prices in nationally distributed publications or other advertising or promotional media.

Therefore, the statements and representations as set forth in Paragraph Four hereof were, and are, false, misleading and deceptive.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their furniture, the respondents have made numerous statements in their promotional material and on tags and labels attached to this furniture with respect to their guarantee accompanying their products.

Typical and illustrative of the aforesaid statements, but not all inclusive thereof, are the following:

Featuring the famous Lifetime Construction Guarantee
Famous for the Lifetime Construction Guarantee

PAR. 7. By and through the use of the above-quoted statements and representations and others of similar import and meaning, but not specifically set out herein, the respondents represent, and have represented, that their furniture is unconditionally guaranteed for the lifetime of the purchaser.

PAR. 8. In truth and in fact, the respondents' furniture is not unconditionally guaranteed for the lifetime of the purchaser. The guarantee for such furniture has limitations and conditions both as to time and as to extent of the guarantee and these limitations and conditions both as to time and to extent are not disclosed to the purchaser.

Therefore, the statements and representations as set forth in Paragraph Six hereof were, and are, false, misleading and deceptive.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce,

with corporations, firms and individuals in the sale of furniture of the same general kind and nature as that sold by respondents.

PAR. 10. By the aforesaid practices, respondents place in the hands of jobbers, retailers and dealers the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the practices hereinabove alleged.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' furniture by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mastercraft Furniture Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1111 North 13th Street, in the city of Omaha, State of Nebraska.

Respondents Julius Katzman and Maurice Katzman are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Mastercraft Furniture Corporation, a corporation, and its officers, and Julius Katzman and Maurice Katzman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of furniture or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, disseminating or distributing any list, preticketed or suggested retail price that is not established in good faith as an honest estimate of the actual retail price or that appreciably exceeds the highest price at which substantial sales are made in respondents' trade area.

2. Misrepresenting in any manner the prices at which respondents' merchandise is sold at retail.

3. Representing that respondents' merchandise or prices are advertised in nationally distributed publications or other media having national distribution.

4. Representing, directly or by implication, that respondents' products or prices are advertised to any extent or in any manner: *Provided*, *however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that advertising of such products or prices is actually disseminated as represented.

5. Representing that respondents' products are unconditionally guaranteed when there are any conditions or limitations to such guarantees.

6. Using the word "Lifetime" or any other term of the same import in referring to the duration of a guarantee of a product

without clearly and conspicuously disclosing the life to which such reference is made; or misrepresenting in any manner the duration of a guarantee.

7. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

8. Placing in the hands of their agents, salesmen, distributors or retail dealers, or any other person or persons, means and instrumentalities by and through which they may deceive or mislead the purchasing public as hereinabove prohibited.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

WILLIAM'S FRUIT SHIPPING AND SOUVENIRS ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-1285. Complaint, Jan. 9, 1968—Decision, Jan. 9, 1968

Consent order requiring a Miami Beach, Fla., retail partnership, to cease misbranding its textile fiber products and unlawfully removing or mutilating required labels.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that William's Fruit Shipping and Souvenirs, a partnership, and Morris Golzbein and Albert Golzbein, individually and as copartners, of said partnership sometimes hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent William's Fruit Shipping and Souvenirs is a partnership. Respondents Morris Golzbein and Albert Golzbein are individuals and copartners in said partnership.

Respondents are engaged in the retail operation of selling souvenir items and shipping Florida citrus fruits to recipients in various parts of the United States. Textile products sold by the firm consist of T-shirts, sweat shirts, towels, scarves and bibs. The respondents have their office and principal place of business located at 1668 A Collins Avenue, Miami Beach, Florida.

PAR. 2. Respondents are now and for some time last past, have been engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products, were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible the name of the country where imported textile fiber products were processed or manufactured.

PAR. 4. Respondents, in violation of Section 5(a) of the Textile Fiber Products Identification Act have caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefor labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 5. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act

and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admisison by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent William's Fruit Shipping and Souvenirs is a partnership, with its office and principal place of business located at 1668 A Collins Avenue, Miami Beach, Florida.

Respondents Morris Golzbein and Albert Golzbein are individuals and copartners of said partnership and their address is the same as that of said partnership.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents William's Fruit Shipping and Souvenirs, a partnership, and Morris Golzbein and Albert Golzbein, individually and as copartners, trading as William's Fruit Shipping and Souvenirs or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale in commerce, or the transportation or causing to be transported in commerce, or in the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber products, which have been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Indentification Act.

It is further ordered, That respondents William's Fruit Shipping and Souvenirs, a partnership, and Morris Golzbein and Albert Golzbein, individually and as copartners trading as William's Fruit Shipping and Souvenirs or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4 of said Act and the Rules and Regulations promulgated thereunder and in the manner prescribed by Section 5(b) of said Act.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

K & S PHARMACEUTICAL COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-1286. Complaint, Jan. 9, 1968—Decision, Jan. 9, 1968

Consent order requiring a Miami, Fla., marketer of a weight-reducing preparation called "Slimodex," to cease making unauthorized shipments to retail druggist, naming them in advertising and representing that the consignees will guarantee the product without prior agreement.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that K & S Pharmaceutical Company, Inc., a corporation, and Morris Kurkin and Louis Stein, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent K & S Pharmaceutical Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 1205 Lincoln Road, in the city of Miami Beach, State of Florida. Respondents Morris Kurkin and Louis Stein are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of a weight reducing product called "Slimodex" to retailers for resale to the consuming public.

PAR. 3. In the course and conduct of their business, respondents now cause and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in various other States of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have engaged in the practice of making unordered and unauthorized shipments of their said product to retail drugstores located in the various States of the United States, and in the further practice of inserting or causing the insertion of advertisements in newspapers of general circulation in the communities where the retail drugstores, to which the aforesaid unordered and unauthorized shipments were made, are located. The aforesaid advertisements announce the availability of respondents' product at the local retail drugstores named therein, and to which the aforesaid unordered and unauthorized shipments have been made, and further state that respondents' product, "Slimodex," was guaranteed by the retail drugstores named therein, without prior consent, approval or permission to use the name of such drugstores in such advertisements, and without an agreement by such drugstores to guarantee respondents' product, "Slimodex." Said advertisements have the false appearance of having been inserted in the said newspapers by the local retail drugstores named therein.

The acts and practices as hereinabove set forth were and are unfair and deceptive.

PAR. 5. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondents.

PAR. 6. The aforesaid unfair and deceptive acts and practices of respondents have had, and now have, the tendency and capacity to induce, and have induced, retail drugstores and members of the purchasing public to purchase substantial quantities of respondents' product.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent K & S Pharmaceutical Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1205 Lincoln Road, in the city of Miami Beach, State of Florida.

Respondents Morris Kurkin and Louis Stein are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents K & S Pharmaceutical Company, Inc., a corporation, and its officers, Morris Kurkin and Louis Stein, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Slimodex or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Shipping or sending any merchandise to any drugstore or retail establishment without the prior written authorization or prior written consent of the person, company or corporation to whom such merchandise is sent.

2. Placing any newspaper advertisement, or causing the dissemination of an advertisement in any other manner for the

purpose of publicizing such products, which advertisement uses the name of any drugstore or retail establishment, without having previously obtained a written authorization or written consent of the druggist or retail establishment whose name appears in the advertisement.

3. Representing directly or by implication, that such product is guaranteed by anyone other than respondents, without the prior knowledge and written consent of the persons or retail establishments involved to the nature, terms and conditions of any guarantee for such product.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

EARLE J. MAIXNER ET AL. TRADING AS THE CHINCHILLA GUILD, ETC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8707. Complaint, Aug. 26, 1966—Decision, Jan. 12, 1968 *

Consent order requiring two Bakersfield, Calif., sellers of chinchilla breeding stock, to cease misrepresenting the profits to be made in chinchilla breeding, the fertility of their stock, the sale price of the pelts, furnishing false guarantees, and falsely using the term "Guild" as part of their corporate name.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Earle J. Maixner and Roberta C. Maixner, individuals trading and doing business as The Chinchilla Guild, The Chinchilla Guild of America and Breath-O-Heaven and Robert C. Brennan also known as Robert C. Brennan, Sr., an individual doing business as The Chinchilla Guild and The Chinchilla Guild of America and Bill K. Hargis, also known as Billy K. Hargis, an individual doing business as The Chinchilla Guild

* Final order as to respondents Robert C. Brennan and Bill K. Hargis dated Aug. 8, 1968, 74 F.T.C. 576.

and The Chinchilla Guild of America and Harold McNeil, an individual doing business as The Chinchilla Guild and The Chinchilla Guild of America, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Earle J. Maixner and Roberta C. Maixner are individuals trading and doing business as The Chinchilla Guild, The Chinchilla Guild of America and Breath-O-Heaven. Their principal office and place of business is located at 220 Eureka Street, Bakersfield, California 93305. The individual respondents formulate, direct and control the acts and practices of the said businesses including those hereinafter set forth.

Respondent Robert C. Brennan also known as Robert C. Brennan, Sr., is an individual doing business as The Chinchilla Guild and The Chinchilla Guild of America. His principal office and place of business is located at 3540 Power Inn Road, Sacramento, California 95826.

Respondent Bill K. Hargis also known as Billy K. Hargis, is an individual doing business as The Chinchilla Guild and The Chinchilla Guild of America. His principal office and place of business is located at 159 East 3900 South, Salt Lake City, Utah 84107.

Respondent Harold McNeil, is an individual doing business as The Chinchilla Guild and The Chinchilla Guild of America. His principal office and place of business is located at 1700 East 30th Street, Hutchinson, Kansas 67501.

All the aforementioned individual respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

Pursuant to distributorship agreements executed by respondents Maixners, the other named respondents were granted the exclusive right to sell chinchillas, equipment, supplies and memberships in The Chinchilla Guild in certain states. Under the distributorship agreements respondents Maixners were to provide promotional literature, methods and techniques for the retail sale of chinchillas, sales agreements, Membership Certificates, warranties, chinchillas, supplies, equipment, and at times, the financing of sales agreements. The distributors agreed to purchase a minimum number of chinchillas each month and to sell the animals at a stated retail price. Following sales, records incident thereto were forwarded to respondents Maixners in accordance with the respective agreements. Respondents Maixners then

shipped the chinchillas to the distributors for delivery to the purchasers. Purchasers subsequently returned the animals grown by them to the respondents Maixners for priming, pelting and selling.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said chinchillas, when sold, to be shipped from their aforementioned respective places of business to purchasers thereof located in various other States of the United States, other than the State of origination, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of said chinchillas, the respondents make numerous statements and representations in direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by salesmen, with respect to the breeding of chinchillas in the home for profit and without previous experience, the rate of reproduction of said animals, the expected income from the sale of their pelts, their warranty and the status of their organization.

Typical and illustrative of said statements and representation, but not all inclusive thereof are the following:

Chinchilla ranchers are earning thousands of dollars a year IN THEIR SPARE TIME. Turn extra room into income for Education, Travel, Retirement. With just a few hundred dollars invested YOU CAN PULL YOURSELF OUT OF YOUR MONTHLY PAY-CHECK RUT!!!

PROFIT IS HIGH, QUALITY pelts are valued at $20–$55 on today's market. The demand for pelts increases every year.

Hundreds of members of The Chinchilla Guild have set themselves up in business with as little as $126 cash.

* * * This small amount of space, about the size of your garage, would be all you would need for a chinchilla breeding unit that could return $3,000 to $5,000 a year.

Starting With 6 Select High Quality Females And 2 Select Males: 2 Units, Assuming your Females Produce an Average of 4 Offspring Yearly.

1st year: 2 Units

Your 6 Females would Produce—24 Offspring. *Keep 12 Females, Market 8 Males.*

2nd year: 6 Units

Your 18 Females would Produce—72 Offspring. *Keep 36 Females, Market 24 Males.*

3rd year: 18 Units

Your Females would Produce—216 Offspring. *Keep 108 Females, Market 72 Males.*

Yearly: 54 Units

Your 162 Females would Produce—*648 Offspring yearly.* . . .

That's a gross income of
$16,200.00
a year
(Based *Conservatively* on $25.00 Pelt Price Average.)

Warranted they will live for 3 years and double their number the first year.

PAR. 5. By and through the use of the above said statements and representations and others of similar import and meaning but not expressly set out herein, and through the oral statements and representations made in sales presentations to purchasers, respondents represent and have represented, directly or by implication that:

1. It is practicable to raise chinchillas in the home and large profits can be made in this manner.

2. The breeding of chinchillas for profit requires no previous experience.

3. The breeding stock of six female chinchillas and two male chinchillas purchased from respondents will result in live offspring as follows: 24 the first year, 72 the second year, 216 the third year and 648 the fourth year.

4. All of the offspring referred to in Paragraph Five (3) above will have pelts selling for an average price of $25 per pelt.

5. Each female chinchilla purchased from respondents and each female offspring will produce at least four live young per year.

6. Pelts from the offspring of respondents' breeding stock generally sell for $20 to $55 per pelt.

7. A purchaser starting with six females and two males of respondents' chinchilla breeding stock will have a gross income of $16,200 from the sale of the pelts in the fourth year.

8. A purchaser of respondents' breeding stock can set himself up in business with as little as a $126 cash down payment.

9. Chinchilla breeding stock purchased from respondents is unconditionally warranted to live three years and double their number the first year.

10. Through the use of the word "guild" separately and as a part of respondents' trade name, respondents are a "guild" or association formed for the mutual aid and protection of purchasers of respondents' chinchilla breeding stock.

PAR. 6. In truth and in fact:

1. It is not practicable to raise chinchillas in the home and large profits cannot be made in such manner.

2. The breeding of chinchillas for profit requires specialized knowledge in the feeding, care and breeding of said animals much of which must be acquired through actual experience.

3. The initial chinchilla breeding stock of six females and two males purchased from respondents will not result in the number specified in subparagraph (3) Paragraph Five above since these figures do not allow for factors which reduce chinchilla production, such as those born dead or which die after birth, the culls which are unfit for reproduction, fur chewers and sterile animals.

4. All of the offspring referred to in subparagraph (4) of Paragraph Five above will not produce pelts selling for an average price of $25 per pelt but substantially less than that amount.

5. Each female chinchilla purchased from respondents and each female offspring will not produce at least four live young per year but generally less than that number.

6. A purchaser of respondents' chinchillas could not expect to receive from $20 to $55 for each pelt produced since some of the pelts are not marketable at all and others would not sell for $20 but for substantially less than that amount.

7. A purchaser starting with six females and two males of respondents' breeding stock will not have a gross income of $16,200 from the sale of pelts in the fourth year but substantially less than that amount.

8. A purchaser of respondents' breeding stock cannot set himself up in business with as little as $126 cash down payment as advertised but will, in fact, be required to pay substantially more as a cash down payment.

9. Chinchilla breeding stock purchased from respondents is not unconditionally warranted to live three years and double their number the first year but said guarantee is subject to numerous terms, limitations and conditions.

10. Respondents' business organization is not a guild or association formed for the mutual aid and protection of purchasers of respondents' chinchilla breeding stock but is a business organization formed for the purpose of selling chinchilla breeding stock for a profit.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The respondents by and through the use of the aforesaid acts and practices place in the hands of jobbers, retailers, and dealers, the means and instrumentalities by and through which they may mislead and deceive the public in the manner as herein above alleged.

PAR. 8. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms, and individuals in the sale of chinchilla breeding stock.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' chinchillas by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER IN DISPOSITION OF THIS PROCEEDING AS TO RESPONDENTS EARLE J. MAIXNER AND ROBERTA C. MAIXNER

The Commission having issued its complaint in this proceeding on August 26, 1966, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents Earle J. Maixner and Roberta C. Maixner having been served with a copy of that complaint; and

Upon motion of respondents Earle J. Maixner and Roberta C. Maixner and for good cause shown, the Commission, having on August 17, 1967, pursuant to § 2.34(d) of its Rules, withdrawn the matter from adjudication as to respondents Earle J. Maixner and Roberta C. Maixner and granted them opportunity to negotiate, under Subpart C of Part 2 of its Rules, a settlement by the entry of a consent order; and

Respondents Earle J. Maixner and Roberta C. Maixner and counsel supporting complaint having thereafter executed an agreement containing a consent order, an admission by said respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by said respondents and that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional find-

ings, and enters the following order to cease and desist in disposition of the proceeding as to respondents Earle J. Maixner and Roberta C. Maixner:

1. Respondents Earle J. Maixner and Roberta C. Maixner are individuals trading and doing business as The Chinchilla Guild, The Chinchilla Guild of America and Breath-O-Heaven. Their principal office and place of business is located at 220 Eureka Street, Bakersfield, California 93305.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the said respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Earle J. Maixner and Roberta C. Maixner, individuals trading and doing business as The Chinchilla Guild, The Chinchilla Guild of America and Breath-O-Heaven, or trading and doing business under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of chinchilla breeding stock or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that it is practicable to raise chinchillas in the home or that large profits can be made in this manner.

2. Representing, directly or by implication, that breeding chinchillas for profit can be achieved without previous knowledge or experience in the feeding, care and breeding of such animals.

3. Representing, directly or by implication, that the initial chinchilla breeding stock of six females and two male chinchillas purchased from respondents will produce live offspring of 24 the first year, 72 the second year, 216 the third year, or 648 the fourth year; or that chinchillas will produce live offspring in any number in excess of that usually and customarily produced by chinchillas sold by respondents, or the offspring of said chinchillas.

4. Representing, directly or by implication, that all of the offspring of chinchilla breeding stock purchased from respondents will produce pelts selling for the average price of $25 each; or representing that a purchaser of respondents' breeding stock will receive for chinchilla pelts any amount in excess of the amount usually received for pelts produced by chinchillas purchased from respondents, or their offspring.

5. Representing, directly or by implication, that each female chinchilla purchased from respondents and each female offspring produce at least four live young per year; or that the number of live offspring per female is any number in excess of the number generally produced by females purchased from respondents, or their offspring.

6. Representing, directly or by implication, that pelts from the offspring of respondents' breeding stock generally sell for $20 to $55 each; or that chinchilla pelts produced from respondents' breeding stock will sell for any amount in excess of that usually received by purchasers of respondents' breeding stock for pelts of like grade and quality.

7. Representing, directly or by implication, that a purchaser starting with six females and two males will have, from the sale of pelts, a gross income of $16,000 in the fourth year after purchase; or that the earnings or profits from the sale of pelts is any amount in excess of the amount generally earned by purchasers of respondents' chinchilla breeding stock; or misrepresenting, in any manner, the earnings or profits of purchasers of respondents' chinchilla breeding stock.

8. Representing, directly or by implication, that a purchaser of respondents' breeding stock can set himself up in business with as little as a $126 cash down payment; or for any other amount which is less than the actual down payment customarily and regularly required by respondents.

9. Representing, directly or by implication, that breeding stock purchased from respondents is warranted or guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor.

10. Misrepresenting in any manner the nature or status of respondents' business or using the word "Guild" or any other word or term of similar import or meaning as part of respondents' trade or corporate name or in any other manner: *Provided, however*, That respondents shall not be prohibited from using the name "Maixner's Chinchilla Guild of America" as a designation of their business: *And, provided further*, That whenever such name is used on letterheads or in any promotional materials disseminated to the public, the words "owned and operated by Mr. and Mrs. Earle J. Maixner" shall be conspicuously set forth in immediate conjunction therewith: *And, provided further*, That nothing herein shall be construed to prohibit respondents from referring to

their own standards for live animal evaluation as "Maixner's Guild Quality," or from using the word "Guild" on animal identification ear tags.

11. Placing in the hands of jobbers, retailers or dealers any means or instrumentalities by or through which they mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That respondents Earle J. Maixner and Roberta C. Maixner shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Decision and Order in Disposition of This Proceeding As to Respondent Harold McNeil

The Commission having issued its complaint in this proceeding on August 26, 1966, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent Harold McNeil having been served with a copy of that complaint; and

Upon motion of respondent Harold McNeil and for good cause shown, the Commission, having on August 17, 1967, pursuant to § 2.34(d) of its Rules, withdrawn the matter from adjudication as to respondent Harold McNeil and granted him opportunity to negotiate, under Subpart C of Part 2 of its Rules, a settlement by the entry of a consent order; and

Respondent Harold McNeil and counsel supporting complaint having thereafter executed an agreement containing a consent order, an admission by said respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by said respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order to cease and desist in disposition of the proceeding as to respondent Harold McNeil:

1. Respondent Harold McNeil is an individual doing business as The Chinchilla Guild and The Chinchilla Guild of America. His principal office and place of business is located at 1700 East 30th Street, Hutchinson, Kansas 67501.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the said respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Harold McNeil, an individual doing business as The Chinchilla Guild and The Chinchilla Guild of America or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of chinchilla breeding stock or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that it is practicable to raise chinchillas in the home or that large profits can be made in this manner.

2. Representing, directly or by implication, that breeding chinchillas for profit can be achieved without previous knowledge or experience in the feeding, care and breeding of such animals.

3. Representing, directly or by implication, that the initial chinchilla breeding stock of six females and two male chinchillas purchased from the respondents will produce live offspring of 24 the first year, 72 the second year, 216 the third year, or 648 the fourth year; or that chinchillas will produce live offspring in any number in excess of that usually and customarily produced by chinchillas sold by respondent or the offspring of said chinchillas.

4. Representing, directly or by implication, that all of the offspring of chinchilla breeding stock purchased from respondent will produce pelts selling for the average price of $25 each; or representing that a purchaser of respondent's breeding stock will receive for chinchilla pelts any amount in excess of the amount usually received for pelts produced by chinchillas purchased from respondent, or their offspring.

5. Representing, directly or by implication, that each female chinchilla purchased from respondent and each female offspring

produce at least four live young per year; or that the number of live offspring per female is any number in excess of the number generally produced by females purchased from respondent, or their offspring.

6. Representing, directly or by implication, that pelts from the offspring of respondent's breeding stock generally sell for $20 to $55 each; or that chinchilla pelts produced from respondent's breeding stock will sell for any amount in excess of that usually received by purchasers of respondent's breeding stock for pelts of like grade and quality.

7. Representing, directly or by implication, that a purchaser starting with six females and two males will have, from the sale of pelts, a gross income of $16,200 in the fourth year after purchase; or that the earnings or profits from the sale of pelts is any amount in excess of the amount generally earned by purchasers of respondent's chinchilla breeding stock; or misrepresenting, in any manner, the earnings or profits of purchasers of respondent's chinchilla breeding stock.

8. Representing, directly or by implication, that a purchaser of respondent's breeding stock can set himself up in business with as little as a $126 cash down payment; or for any other amount which is less than the actual down payment customarily and regularly required by respondent.

9. Representing, directly or by implication, that breeding stock purchased from respondent is warranted or guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor.

10. Using the world "Guild" or any other word of similar import or meaning as part of respondent's trade or corporate name or misrepresenting in any other manner the nature or status of respondent's business.

11. Placing in the hands of jobbers, retailers or dealers any means or instrumentalities by or through which they mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That respondent Harold McNeil shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

418-345—72——5

IN THE MATTER OF

PACIFIC NORTHWEST COLLECTIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-1287. Complaint, Jan. 16, 1968—Decision, Jan. 16, 1968

Consent order requiring two affiliated concerns in Tacoma, Wash., to cease selling or using deceptive "skip-tracing" forms.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Pacific Northwest Collections, Inc., a corporation, Capital Recovery Company, Inc., a corporation, and Warder W. Stoaks and John R. Stoaks, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Pacific Northwest Collections, Inc., and Capital Recovery Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Washington, with their respective principal offices and places of business located at 717 Puget Sound National Bank Building, Tacoma, Washington.

Respondents Warder W. Stoaks and John R. Stoaks are officers of both of said corporate respondents. They own a controlling interest in both of said corporate respondents and acting together they formulate, direct and control the acts and practices of both of said corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondent Pacific Northwest Collections, Inc., is now, and for some time last past has been, engaged in the operation of a collection agency and in collecting alleged delinquent debts owed to others upon a commission basis contingent upon collection.

Respondent Capital Recovery Company, Inc., is now, and for some time last past has been, engaged in selling, furnishing and distributing forms to the other corporate respondent and others for use in attempting to collect alleged delinquent debts or obtaining information as to the whereabouts of alleged delinquent debtors.

PAR. 3. In the course and conduct of its business, respondent Pacific Northwest Collections, Inc., is now, and for some time last past has been, receiving accounts for collection from persons, firms and corporations located outside the State of Washington and has been referring accounts which it has received for collection to persons, firms and corporations in States other than the State of Washington and has been collecting accounts owed by persons, firms and corporations who are located outside the State of Washington. In addition thereto respondent Pacific Northwest Collections, Inc., has caused certain forms, hereinafter referred to, to be transported from its place of business in the State of Washington to addressees in other States of the United States and has caused the said forms to be transported from their place of business in the State of Washington to addressees within the State of Washington in an attempt to collect accounts which have been referred to the said respondent for collection from persons located in States other than the State of Washington and has sent and received by means of the United States mail letters, checks and documents to and from States other than the State of Washington.

In the course and conduct of its business, respondent Capital Recovery Company, Inc., is now, and for some time last past has been selling, furnishing and distributing to others, both inside and outside the State of Washington, certain forms for use in the collection of alleged delinquent debts and the obtaining of information as to the whereabouts of alleged delinquent debtors.

Both of said respondents maintain, and at all times herein mentioned have maintained, a substantial course of trade in said business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent Pacific Northwest Collections, Inc., frequently desires to make contact with alleged delinquent debtors so that collections may be made, and frequently desires to obtain information as to the current addresses, places of employment and other pertinent information of alleged delinquent debtors whose present whereabouts is unknown and whose alleged delinquent accounts the said respondent is seeking to collect. For this purpose it uses and has used various printed forms.

Typical and illustrative, but not all inclusive, of said forms are the following: [Pictorial exhibits of Form Nos. 1, 2 and 3 are omitted in printing.]

Form designated No. 1 is a yellow card of the same size as an IBM card with holes punched to simulate use in automatic filing. This form is similar to that used by the Western Union Telegraph Company to

notify the addressees of a telegram which cannot be delivered, so as thereby to constitute a representation that an undelivered telegram or other message is being held by that company.

Form No. 2 is a tag similar to that used in shipping merchandise and constitutes a representation that undelivered merchandise is being held by a carrier.

Form No. 3 is printed on yellow paper 3½" x 6" in size and similar to a form which would be used in business and represents and implies that a sum of money is being held for an employee by a former employer, "Western Coast Employers Assn., Tacoma, Wash."

PAR. 5. In truth and in fact, there is no undelivered telegram or other message; there is no undelivered merchandise; and there is no money being held for an employee by a former employer, "Western Coast Employers Assn., Tacoma, Wash."

Form Nos. 1 and 2 cause the debtors to contact the Pacific Northwest Collections, Inc., and the sole purpose of Form No. 3 is to obtain information as to an alleged delinquent debtor whose whereabouts is unknown. By the use of such forms said respondent represents, directly or by implication, that the business of said respondent is other than the collection of delinquent debts.

Therefore, the statements and representations set forth in Paragraph Four hereof were, and are, false, misleading and deceptive.

PAR. 6. The respondent Capital Recovery Company Inc., sells, furnishes and distributes the above referenced and other equally false, misleading and deceptive forms to the respondent Pacific Northwest Collections, Inc., and others, for use in collecting alleged delinquent debts or obtaining information when the alleged delinquent debtors present whereabouts is unknown.

PAR. 7. In the conduct of their business and at all times mentioned herein, respondents have been in substantial competition in commerce with other corporations, firms, and individuals engaged in the business of operating collection agencies.

PAR. 8. The use by respondents, as hereinabove set forth of said forms has had, and now has, the tendency and capacity to mislead and deceive persons to whom said forms are sent into the erroneous and mistaken belief that said representations and implications were and are, true and to induce the recipients thereof to supply information which they otherwise would not have supplied.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Pacific Northwest Collections, Inc., and Capital Recovery Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Washington, with their offices and principal places of business located at 717 Puget Sound National Bank Building, Tacoma, Washington.

Respondents Warder W. Stoaks and John R. Stoaks are officers of said corporations and their address is the same as that of said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondents Pacific Northwest Collections, Inc., a corporation, and Capital Recovery Company, Inc., a corporation, and their officers, and Warder W. Stoaks and John R. Stoaks, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with collecting or attempting to collect alleged delinquent accounts or attempting to ascertain the

present whereabouts of alleged delinquent debtors or in connection with the sale, furnishing or distribution of forms for use in obtaining information concerning alleged delinquent debtors or in the collection of alleged delinquent accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, or placing in the hands of others for use, any form, questionnaire or other material, printed or written, which does not clearly and conspicuously reveal that the purpose for which the information is requested is (a) to assist in determining whether a debt is due, and (b) to collect it.

2. Representing, or placing in the hands of others any means by which they may represent, directly or by implication, that money or a free gift or any other thing of value, is being held for any person as to whom information is sought.

3. Using the name "Western Coast Employers Assn." or any other name or words of similar import to designate, describe or refer to respondents' business.

4. Misrepresenting, in any manner, directly or by implication, the identity of the sender or the origin of any inquiry, the purpose for which the information is sought, or the nature or status of respondents' business.

5. Placing in the hands of others the means and instrumentalities whereby they may misrepresent in any manner, directly or by implication, the purpose for which information is sought by them or the nature or status of their business.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

JEFFERSON WOOLEN MILLS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket C-1288. Complaint, Jan. 16, 1968—Decision, Jan. 16, 1968

Consent order requiring a Jefferson, Oregon, woolen mill to cease misbranding the fiber content of its woolen blankets.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jefferson Woolen Mills, Inc., a corporation, and C. Elton Page, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jefferson Woolen Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon.

Individual respondent C. Elton Page is an officer of said corporate respondent. He formulates, directs and controls the acts, policies and practices of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products with their office and principal place of business located at Jefferson, Oregon.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain blankets stamped, tagged, labeled or otherwise identified as containing "50% new wool, 30% rayon, 20% nylon," whereas in truth and in fact, said blankets contained substantially different amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Prod-

ucts Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain blankets with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Jefferson Woolen Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located in the city of Jefferson, State of Oregon.

Respondent C. Elton Page is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Jefferson Woolen Mills, Inc., a corporation, and its officers, and C. Elton Page, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to or place on, each such product a stamp, tag, label, or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

L. MYERS CO. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACT

Docket C-1289. Complaint, Jan. 16, 1968—Decision, Jan. 16, 1968

Consent order requiring a San Francisco, Calif., wholesaler of wool products, to cease marketing misbranded wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that L. Myers Co., a partnership, and Leslie G. Myers and Maxwell A. Myers, individually and as copartners trading as L. Myers Co., hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent L. Myers Co., is a partnership. Respondents Leslie G. Myers and Maxwell A. Myers are individuals and copartners trading as L. Myers Co. All respondents have their office and principal place of business located at 658 Howard Street, in the city of San Francisco, State of California.

Respondents are wholesalers of wool products.

PAR. 2. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool products" in defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain blankets stamped, tagged, labeled or otherwise identified as containing "50% new wool, 30% rayon, 20% nylon," whereas in truth and in fact, said blankets contained substantially different amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain blankets with labels on or affixed thereto which failed to dis-

close the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition, and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent L. Myers Co. is a partnership. Respondents Leslie G. Myers and Maxwell A. Myers are individuals and copartners trading

as L. Myers Co. Respondents' office and principal place of business is located at 658 Howard Street, San Francisco, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents L. Myers Co., a partnership, and Leslie G. Myers and Maxwell A. Myers, individually and as copartners trading as L. Myers Co., and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, or offering for sale, selling, transporting, distributing or delivering for shipment or shipping, in commerce, wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939:

1. Which are falsely or deceptively stamped, tagged, labeled or otherwise identified as to the character or amount of the constituent fibers contained therein.

2. Unless such products have securely affixed thereto or placed thereon a stamp, tag, label or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

JOSEPH L. PORTWOOD ET AL.

TRADING AS THE PORTWOOD COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8681. Complaint, Apr. 14, 1966—Decision, Jan. 19, 1968

Order requiring the operators of an Albuquerque, N. Mex., mail-order philatelic stamp business, to cease sending unordered stamps to prospective customers and using threats and coercion to collect for such unordered merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Joseph L. Portwood and Betty Portwood, individuals, trading and doing business as The Portwood Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Joseph L. Portwood and Betty Portwood are individuals trading and doing business as The Portwood Company, with their principal office and place of business located at 122 Yale Boulevard, South East in the city of Albuquerque, State of New Mexico.

Said individual respondents cooperate and act together to formulate, direct and control the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising offering for sale, sale and distribution of stamps for use in philately to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, to be shipped and sold from their place of business in the State of New Mexico to prospective purchasers thereof located in various other States of the United States and in foreign countries, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, the respondents ship unordered selections of stamps to persons with whom, in many cases, respondents have had no prior dealings or communications of any kind with the intent and purpose that such persons, either voluntarily or in response to respondents' coercion, will purchase or return said stamps. An "approval invoice" showing the price which respondents expect to receive for the selection of stamps accompanies the initial mailing. The stamps are mounted in a booklet showing the price of each stamp if purchased individually.

Where payment for, or return of merchandise is not forthcoming, the respondents cause letters and postcards to be sent to the individual concerned for the purpose of inducing such payment and/or re-

turn. Among and typical of the statements contained in such letters and postcards are the following:

This material was forwarded to you on approval, for your examination, with the understanding that returns would be made promptly.

Unless we receive payment in full, or return of the stamps and payment for any retained, by (date), your account will be turned over to our attorneys for immediate action.

Since evidence of your using the mails to defraud is readily available, in the book itself, we suggest that it would not be wise to delay sending your payment. We are *not* interested in having any of the stolen stamps sent back to us.

PAR. 5. By and through the use of the above-quoted statement, and others of similar import but not specifically set out herein, the respondents represent, directly or by implication, that:

1. Money is due and owing for unordered selections of stamps.

2. Some contract, agreement or understanding exists with the recipient of stamps sent on approval to pay for said stamps or, in the alternative, to return said stamps.

3. If stamps sent on approval are not paid for or returned, the matter will be referred to attorneys for collection.

4. A person who has not returned unordered selections of stamps has stolen such stamps and such person is using the mails to defraud.

PAR. 6. In truth and in fact:

1. Money is not due and owing for unordered selections of stamps.

2. No contract, agreement or understanding exists with the recipient of stamps sent on approval to pay for said stamps or, in the alternative, to return said stamps.

3. Accounts are not referred to attorneys for collection.

4. Persons failing to return unordered selections of stamps have not stolen such stamps and are not using the mails to defraud.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. Respondents' practice of sending mechandise or approval merchandise to persons who have not requested such merchandise and attempting to exact payment for such merchandise now has, and has had, the capacity and tendency to confuse many persons, to create doubt in their minds as to their rights and legal obligations in respect to such merchandise or approval mechandise; and, causes many persons to pay for the merchandise because of the confusion and doubt so generated. The practice now has, and has had, the tendency and capacity to harass, inconvenience, intimidate and coerce and does harass,

inconvenience, intimidate and coerce persons into purchasing and paying for merchandise sent by the respondents.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of stamps of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Carlos P. Lamar, III, supporting the complaint.

Franks & deVesty, Albuquerque, N. Mex., by *Mr. Leland B. Franks* and *Mr. Malcolm W. deVesty* for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

OCTOBER 17, 1966

This is a proceeding under Section 5 of the Federal Trade Commission Act [1] in which counsel supporting the complaint seeks an order that would require respondents in the conduct of a mail-order philatelic stamp business to cease and desist from making false, misleading, and deceptive representations to the persons to whom respondents mail their philatelic stamps on approval—frequently without having received any orders therefor—and sometimes in spite of specific instructions not to send such stamps.

Using a confidential mailing list of approximately 6,000 active "accounts," respondents mail unsolicited stamp selections on "approval" [2] to from 120 to 150 persons each week without a specific order therefor and without payment in advance (Tr. 30). The approval mer-

[1] 15 U.S.C.A. § 45 "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

[2] Mr. Portwood has defined "approval sales" as any selection of stamps sent to a customer without payment in advance and/or without a specific order for those specific stamps.

chandise, thus mailed, may be either ordered or unordered merchandise (Tr. 26). The mailee [3] may purchase part or all of the selection sent to him, paying for the stamps he retains; or he may reject the selection entirely and return it (Tr. 24, 25). Approximately 80 percent of the mailees either purchase some or all of the stamps or return the stamps without any additional contact (Tr. 40). After two innocuous followup reminders (CX 4), another 10 percent of the mailees respond by buying and/or returning the stamps (Tr. 41).

It is respondents' business techniques in dealing with the nonresponding 10 percent of the mailees that complaint counsel considers violative of Section 5 of the Federal Trade Commission Act.

Complaint counsel in effect avers in Paragraphs Five and Six of the complaint that respondents, in communicating with the nonresponding 10 percent of their mailees, represent directly or by implication, *contrary to the fact:*

1. That money is due or owing for unordered selections of stamps,
2. That some contract, agreement, or understanding exists between respondents and the mailees to pay for the unordered "approval" stamps or to return them to respondents,
3. That if the approval stamps are not paid for or returned, the matter will be referred to attorneys for collection, even though respondents do not, in fact, intend to refer the matter to attorneys for collection, and
4. That a person who has not returned unordered selections of stamps has stolen such stamps and such person is using the mails to defraud.

Complaint counsel further avers in Paragraph Seven of the complaint that:

> Respondents' practice of sending merchandise or approval merchandise to persons who have not requested such merchandise and attempting to exact payment for such merchandise now has, and has had, the capacity and tendency to confuse many persons, to create doubt in their minds as to their rights and legal obligations in respect to such merchandise or approval merchandise; and, causes many persons to pay for the merchandise because of the confusion and doubt so generated. The practice now has, and has had, the tendency and capacity to harass, inconvenience, intimidate and coerce and does harass, inconvenience, intimidate and coerce persons into purchasing and paying for merchandise sent by the respondents.

Complaint counsel does not seek to enjoin respondents from mailing unordered stamps on approval to prospective and former customers; he seeks to require respondents to word all communications to their

[3] The word "mailee" is used because the recipients are not necessarily "customers" of respondents until a buyer-seller relationship has been established.

mailees so that the mailees will not be deceived, directly or by implication, or by innuendo, concerning:

(1) the precise legal relationship between respondents and the mailee; and

(2) the legal obligations of the mailee, if any, resulting from such legal relationship.

In their answer, respondents admit that they are engaged in "commerce" as defined in the Federal Trade Commission Act and that The Portwood Company in the conduct of its philatelic stamp business is in substantial competition, in commerce, with other corporations, firms, and individuals in the sale of stamps of the same general kind as those sold by The Portwood Company. Respondents put in issue:

1. Whether respondent Betty Portwood participates in the operation of The Portwood Company in such a manner as to be bound by any order which may be entered; and

2. The precise nature of the legal relationship between respondents and their mailees, the legal obligations of their mailees to Portwood, and the semantics of respondents' communications with their mailees.

After respondents' answer was filed, prehearing discovery orders were entered, and a prehearing conference was convened in Albuquerque, New Mexico, on June 27, 1966, the day immediately preceding commencement of the hearings. For a week prior thereto, complaint counsel was given complete access to respondents' files pursuant to an order of the hearing examiner dated June 8, 1966. The hearing record consists of the respondents' testimony and Commission and Respondent Exhibits. The record was closed for the receipt of evidence on July 25, 1966. Proposed findings and conclusions, and replies thereto, have been filed. The hearing examiner has considered the proposed findings, replies thereto, and all of the record in this proceeding. Findings which are not made in the form proposed or in substantially that form, are rejected. Any motion heretofore made and not previously ruled upon is denied. The examiner observed respondents' conduct upon the witness stand and finds them to be credible persons in every respect. Unless complaint counsel has introduced substantial probative evidence to the contrary, the statements of respondents, under oath, have been accepted as true.

Respondents make representations to two separate and distinct classes of mailees:

1. Mailees with whom respondents have had prior business dealings and, as a result of a prior course of dealings, may or may not have established a certain legal relationship;

2. Mailees with whom respondents have had no prior business dealings and who have no legal obligations to respondents.

Complaint counsel urges that it is with particular reference to the second class of mailee that respondents' representations are misleading and deceptive within the proscription of the Federal Trade Commission Act.

In many instances respondents ignore specific instructions from their mailees not to send any more stamp selections. Mailees who receive approval selections, contrary to their instructions not to send them, do, in fact, accept and pay for some or all of the stamps.

In *House of Plate, Inc.*, 47 F.T.C. 1411, the Federal Trade Commission held, "The recipient of merchandise shipped without a previous order and in the absence of an agreement to purchase is not obligated to pay for the merchandise or to return it, * * *." The order in *Plate*, *inter alia*, enjoined respondent from "Representing, directly or by implication, that a recipient of merchandise shipped without a previous order and in the absence of an agreement to purchase is obligated to pay for the merchandise or to return it."

In *Lawrence K. Shaver, t/a Mystic Stamp Company, World Wide Stamp Company and National Credit Bureau*, File 1–11662, Stipulation No. 2435, approved April 4, 1939, the stipulation recited, *inter alia:*

> In making collections from delinquent recipients of approval sheets, whether or not such sheets have been requested by the recipients, said Lawrence K. Shaver has used a series of form cards and letters as "reminders" from the Mystic Stamp Company or the World Wide Stamp Company, as the case may be, followed by a letter from what appears to be an independent collection agency, to-wit: National Credit Bureau, upon a letterhead stating that it is "A Nation-Wide Organization for the Interchange of Credit Information and the Collection of Accounts". The letter intimates that further delay in payment will result in damage to the recipient's credit standing generally, and warns that unless payment is received by return mail the matter will be placed in the hands of the bureau's attorneys for legal proceedings without further correspondence. * * *

And, respondent Shaver agreed to an order that directed him, *inter alia*, to cease and desist from:

> (a) Representing, either by direct assertion or by implication, that any recipient of approval sheets of stamps or other merchandise not ordered or otherwise requested by said recipient, is under contract, legally enforceable, either to pay for said unsolicited merchandise or to return the same;
>
> * * * * * * *
>
> (c) The use of the trade name "National Credit Bureau" or of any other fictitious name purporting to be an independent collection agency or credit bureau, for the purpose of collecting payments on his contracts or his alleged contracts, when in fact no such agency exists or is employed by him; representing

that such spurious credit bureau is a nation-wide institution for the interchange of credit information and general collection of accounts, or is in position to impair one's credit standing with the various stamp dealers; or the use of pretended notices simulating court summons or similar instruments designed to frighten debtors by false appearance of legal proceedings against them.

In *Betty Phillips, Inc.*, File No. 5420437, Stipulation No. 8555, approved October 5, 1954, the respondents, in connection with their efforts to collect for boxes of greeting cards which they sent without any prior order therefor, agreed:

* * * that in connection with the distribution of unordered greeting cards in commerce, as "commerce" is defined by the said Act, they and each of them will forthwith cease and desist from representing directly or by implication that recipients thereof are required or are under obligation to remit payment or return the cards.

It was and is a false, misleading, and deceptive act and practice within the purview of Section 5 of the Federal Trade Commission Act for respondents Betty Portwood and Joseph L. Portwood to represent to mailees with whom they have had no prior business dealings that such mailees are under a legal obligation to either pay for the unordered stamps sent to them on approval or to return them. Any representation by respondents, directly or by implication, or by innuendo, that these mailees have such legal obligation is false, misleading, and deceptive and is proscribed by the Federal Trade Commission Act.

In *Hobbs* v. *Massasoit Whip Company*, 158 Mass. 194 (1893), 33 NE 495, plaintiff sued to recover for eel skins that he had shipped to the defendant and that the defendant had kept for some months until he destroyed them. Defendant did not notify plaintiff of his refusal to accept the skins. Judge Holmes wrote:

The case comes before us on exceptions to an instruction to the jury that, whether there was any prior contract or not, if skins are sent to the defendant, and it sees fit, whether it has agreed to take them or not, to lie back, and to say nothing, having reason to suppose that the man who has sent them believes that it is taking them, since it says nothing about it, then, if it fails to notify, the jury would be warranted in finding for the plaintiff.

Standing alone, and unexplained, this proposition might seem to imply that one stranger may impose a duty upon another, and make him a purchaser, in spite of himself, by sending goods to him, unless he will take the trouble, and bear the expense, of notifying the sender that he will not buy. The case was argued for the defendant on that interpretation. But, in view of the evidence, we do not understand that to have been the meaning of the judge, and we do not think that the jury can have understood that to have been his meaning. The plaintiff was not a stranger to the defendant, even if there was no contract between them. He had sent eel skins in the same way four or five times before, and they had been accepted and paid for. On the defendant's testimony, it was fair to assume that if it had admitted the eel skins to be over 22 inches in length, and fit for its business, as the plaintiff testified and the jury found that they were, it would have accepted them; that this was understood by the plaintiff; and, indeed, that there was a standing offer to him for such skins.

In such a condition of things, the plaintiff was warranted in sending the defendant skins conforming to the requirements, and even if the offer was not such that the contract was made as soon as skins corresponding to its terms were sent, sending them did impose on the defendant a duty to act about them; and silence on its part, coupled with a retention of the skins for an unreasonable time, might be found by the jury to warrant the plaintiff in assuming that they were accepted, and thus to amount to an acceptance. See Bushel v. Wheeler, 15 Q. B. 442; Benj. Sales, (6th Amer. Ed.) §§ 162–164; Taylor v. Engine Co. 146 Mass. 613, 615, 16 N.E. Rep. 462. The proposition stands on the general principle that conduct which imports acceptance or assent is acceptance or assent, in the view of the law, whatever may have been the actual state of mind of the party—a principle sometimes lost sight of in the cases. O'Donnell v. Clinton, 145 Mass. 461, 463, 14 N.E. Rep. 747; McCarthy v. Railroad Corp., 148 Mass. 550, 552, 20 N.E. Rep. 182.

In *Italian Society of Mutual Beneficence* v. *Sara Vacarella*, 170 So 227 (S.Ct. Ala., 1936), the court, *inter alia*, said:

[3] The question in the case is whether or not, under the law, appellee should be charged with an implied acceptance of the orders by its silence. As above stated, all of appellant's previous orders had been accepted and the goods shipped not later than a week from the giving of such orders, while appellee was silent for twelve days after the giving of the orders here involved, and then refused to accept them in response to appellant's request for shipment. We think the sound governing principles are laid down in Restatement. Contracts, subsection 1(c) of section 72, the applicable part of which is as follows:

"(1) Where an offeree fails to reply to an offer, his silence and inaction operate as an acceptance in the following cases and in no others: * * *

"(c) Where *because of previous dealings* or otherwise, the offeree has given the offeror reason to understand that the silence or inaction is intended by the offeree as a manifestation of assent, and the offeror does so understand." (Italic supplied.)

In *Cook* v. *MV Wasaborg* (U.S.D.C. Oregon 1960), 189 F. Supp. 464, 468, the court held:

[6–9] To create a contract the minds of the parties must meet as to every essential term of the proposed contract and there must be a clear and unequivocal acceptance of a certain and definite offer in order that such offer may become a contract. Joseph v. Donover Co., 9 Cir., 1958, 261 F. 2d 813; Deering-Milliken & Co. v. Modern-Aire of Hollywood, Inc., 9 Cir., 1955, 231 F. 2d 623.

* * * * * * *

It is an accepted rule of law that silence and inaction do not amount to an acceptance of an offer. Beach v. United States, 226 U.S. 243, 33 S.Ct. 20, 57 L.Ed. 205; New York Central R. Co. v. The Talisman, 288 U.S. 239, 53 S.Ct. 328, 77 L.Ed. 721.

In *Columbia Malting Co.* v. *Clausen-Flanagan Corporation*, (2nd Cir. 1924), 3 F. 2d 547, 551, the court, *inter alia*, held:

Silence is not assent, unless there is a duty to speak, and there was no such duty in this case. In Williston on Contracts, vol. 1, § 91, the rule is correctly laid down as follows:

"Generally speaking, an offeree has a right to make no reply to offers, and his silence and inaction cannot be construed as an assent to the offer."

* * * * * * *

and the

courts hold that, even though the offer states that silence will be taken as consent, silence on the part of the offeree cannot turn the offer into an agreement, as the offerer cannot prescribe conditions so as to turn silence into acceptance. In re Empire Assurance Corporation, L. R., 6 Ch., 266; Prescott v. Jones, 69 N. H. 305, 41 A. 352. In Bank of Buchanan County v. Continental National Bank of Los Angeles (C. C. A.) 277 F. 385, 390, it is said that "one to whom an offer is made is under no obligation to do or say anything concerning an offer which he does not accept." And in 13 Corpus Juris, 276, it is stated that "an offer made to another, either orally or in writing, cannot be turned into an agreement because the person to whom it is made or sent makes no reply, even though the offer states that silence will be taken as consent; for the offerer cannot prescribe conditions of rejection so as to turn silence on the part of the offeree into acceptance."

See also *Caterpillar Tractor Co.* v. *Sickler* (Kansas 1939), 87 P. 2d 503.

These hornbook principles must be superimposed upon the facts in the instant record and applied within the special business milieu of the philatelic stamp business in which respondents operate.

In their briefs and arguments respondents demonstrate a misunderstanding of Section 5 of the Federal Trade Commission Act. Complaint counsel was and is under no legal obligation to introduce consumer evidence of deception. Complaint counsel has correctly stated in his Reply, filed September 15, 1966, p. 2:

That the Commission did not produce consumers to testify to their deception does not make the order improper, since actual deception of the public need not be shown in Federal Trade Commission proceedings. *F.T.C.* v. *Winsted Hosiery Co.*, 258 U.S. 483, 494; *F.T.C.* v. *Raladam Co.*, 316 U.S. 149, 152; *Charles of the Ritz Dist. Corp.* v. *F.T.C.*, 143 F. 2d 676 (2d Cir. 1944).

Representations merely having a "capacity to deceive" are unlawful . . . . *F.T.C.* v. *Algoma Lumber Co.*, 291 U.S. 67, 81.

A finding that respondents' communications to the mailees have the capacity and tendency to mislead does not require the support of oral testimony or other evidence because specimens of respondents' communications are in the record. The fact that there is no actual evidence in this record that respondents' mailees are likely to be deceived does not inhibit a finding that respondents' representations to their

mailees were and are misleading. *Dejay Stores* v. *F.T.C.*, 200 F. 2d 865, 867 (2d Cir. 1952). See also *Mohr* v. *F.T.C.*, 272 F. 2d 401 (9th Cir. 1959); *Niresk Industries, Inc.* v. *F.T.C.*, 278 F. 2d 337 (7th Cir. 1960), *cert. denied*, 364 U.S. 883; *Pep Boys–Manny, Moe & Jack* v. *F.T.C.*, 122 F. 2d 158, 161 (3d Cir. 1941); *Perloff* v. *F.T.C.*, 150 F. 2d 757, 759 (3d Cir. 1945).

In *Exposition Press* v. *F.T.C.*, 295 F. 2d 869, 872 (2d Cir. 1961), *cert. denied*, 370 U.S. 917, the court, *inter alia*, held:

Actual consumer testimony is in fact not needed to support an inference of deceptiveness by the Commission. *Charles of the Ritz Distributors Corp.* v. *F.T.C.*, 2 Cir., 1944, 143 F. 2d 676, 680; *cf. E. F. Drew & Co.* v. *F.T.C.*, 2 Cir. 1956, 235 F. 2d 735, *certiorari denied*, 1957, 352 U.S. 969, 77 S.Ct. 360, 1 L.Ed. 323. In evaluating the tendency of language to deceive, the Commission should look not to the most sophisticated readers but rather to the least. *F.T.C.* v. *Standard Educ. Soc'y*, 1937, 302 U.S. 112, 116, 58 S.Ct. 113, 82 L.Ed. 141; *Book-of-the-Month Club, Inc.* v. *F.T.C.*, 2 Cir., 202 F. 2d 486, *certiorari dismissed*, 1953, 346 U.S. 883, 74 S.Ct. 144, 98 L.Ed. 388.

Deceptive acts and practices under the Federal Trade Commission Act are not judged by their effect upon the "ordinary prudent buyer" as respondents mistakenly contend:

The law is not made for protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions. *P. Lorillard Co.* v. *F.T.C.*, 186 F. 2d 52 (4th Cir. 1950). See also *F.T.C.* v. *Standard Education Soc.*, 302 U.S. 112 (1937); *Stanley Laboratories* v. *F.T.C.*, 138 F. 2d 388 (9th Cir. 1943); *Aronberg* v. *F.T.C.*, 132 F. 2d 165 (7th Cir. 1942); *Ford Motor Co.* v. *F.T.C.*, 120 F. 2d 175 (6th Cir. 1941); *Giant Food, Inc.* v. *F.T.C.*, 322 F. 2d 977 (D.C. Cir. 1963).

FINDINGS OF FACT

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest.

2. In the course and conduct of a mail-order philatelic stamp business, respondents now cause, and for some time last past have caused, philatelic stamps to be shipped and sold from their place of business, 122 Yale Boulevard, SE., Albuquerque, New Mexico, to prospective purchasers thereof located in various other States of the United States and in foreign countries. Respondents now maintain, and at all times relevant to this proceeding have maintained, a substantial course of trade in philatelic stamps in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. In the conduct of their business, respondents have been at all relevant times, and now are, in substantial competition in commerce with corporations, firms, and individuals in the sale of philatelic stamps of the general kind and nature as those sold by respondents.

4. In the course and conduct of their business, respondents send on "approval" (*i.e.* without prepayment and without a specific order) unordered selections of philatelic stamps to mailees with whom, in many cases, respondents have had no prior dealings or communications. Respondents also ship unordered selections of stamps on approval to mailees with whom they have had prior dealings and to mailees who have specifically requested respondents not to send any stamps.

5. Joseph L. Portwood has been in the philatelic stamp business for more than thirty-five years, having started while in high school in Nelson, Nebraska (Tr. 17, 18). His first method of operation was to advertise stamps and to send stamps on approval through the mails. He moved to Kansas City, then to New York City, where he was a stamp dealer (with the exception of time out for military service from 1942 to 1946). From 1936 to 1938 respondent Joseph Portwood conducted an over-the-counter stamp business in Radio City in New York, New York. He and his wife came to Albuquerque in 1958 (Tr. 14, 20). Joseph Portwood has been self-employed all of his life in the philatelic stamp business with the exception of four years, when he served in the Armed Services (Tr. 22). He started The Portwood Company in 1948 at 858 Sixth Avenue, New York, New York, and continued at that address until 1958, when he moved the business to its present address at 122 Yale Boulevard, SE., Albuquerque, New Mexico, whence he has operated continuously from 1958 until the present time (Tr. 13–14).

6. The Portwood Company, at the time of the hearings, had four regular employees in addition to respondents (Tr. 5).

7. The record does not establish the precise legal relationship that respondent Betty Portwood bears to The Portwood Company. It is undisputed, however, that Betty Portwood is Joseph Portwood's wife; works in The Portwood Company from 15 to 20 hours each week; supervises the activities of the four employees; and generally supervises the day-to-day operation of the business if Joseph Portwood is away. She is, in essence, a supervisor of part of the office operations (Tr. 5–6, 61). The business records of The Portwood Company are kept under Mrs. Portwood's supervision. She makes pertinent business notations on the Portwood account cards (Tr. 63) and executes the business policies that she and her husband have established (Tr. 64).

Betty Portwood's father, Harry Arthur Siegel, and Joseph Portwood, in partnership, conduct and have for several years conducted a philatelic stamp business from Jackson Heights, New York, under the name of the Harry Arthur Company (Tr. 4; CXs 92 A–N, 93, 94, 95, 96). In the Jackson Heights operation Mr. Siegel acts chiefly as a "remailer." He remails approval stamp books and all related communications, and other materials, all of which are prepared in the Albuquerque office. The staff in respondents' Albuquerque office prepares the stamp approvals, collection letters, reminders, invoices, and all other pertinent documents, packs them in envelopes and sends them to Harry Siegel who, in turn, remails them to the addressees (Tr. 138–143). Harry Siegel receives the returns that are made through the mails to the company in Jackson Heights, New York, and then sends them to the Albuquerque office where the Harry Arthur materials are processed in the same manner as communications that are addressed directly to The Portwood Company (Tr. 137, 139, 142) at its Albuquerque address. Almost all of the names of the mailees for Harry Arthur Company's mailings are obtained from The Portwood Company's mailing lists and have consisted chiefly of mailees to whom Portwood has made sales. The *modus operandi* of Harry Arthur Company parallels that of The Portwood Company in most respects.

8. Even though Betty Portwood testified that she is a "housewife" and is not paid any salary by The Portwood Company, she has used the title "Office Manager" in connection with the company's business and has used that title on the company's forms (Tr. 61). It is found that Betty Portwood is doing business with her husband as The Portwood Company and as the Harry Arthur Company. Any order which is entered in this proceeding should, therefore, bind the respondent Betty Portwood as well as Joseph Portwood (see *The Norman Company*, 40 F.T.C. 296).

9. Respondents' business premises, located at 122 Yale Boulevard, SE., are in a store 25′ wide by 100′ deep (Tr. 16). There are no advertisements or window displays. The Portwoods could serve walk-in customers on these premises, but they have no walk-in customers. All of The Portwood Company's business is transacted through the United States mails (Tr. 16–17).

10. The Portwood Company sells sets or assortments of foreign postage stamps to collectors whose aims are to enlarge and keep their collections in standardized albums (Tr. 15). The Portwoods handle mostly foreign stamps from practically every country in the world, including new countries as they are formed (Tr. 15). The Portwoods buy their philatelic stamps from the usual and customary sources and

sell them by means of a business technique that they have been following for approximately 17 years (Tr. 15). The stamps are put into sets and mounted in approval books for mailing. A specimen approval book is in evidence as CX 1. Commission Exhibit No. 1 sells for $6.95 (Tr. 29). Respondents' Exhibit No. 6 A–G is a Portwood approval book prepared for a mailee of "higher than ordinary calibre" (Tr. 182). This is a more expensive type of collection than CX 1. The mailee of CX 1 is required to purchase an entire set of stamps, the mailee of RX 6 A–G may purchase individual stamps. Respondents Exhibit 6 A–G appeals to a more advanced type of collector than CX 1. It (RX 6 A–G) sells for $15.75 (Tr. 182, 183).

11. Respondents own a stock of "world" stamps, which Mr. Portwood has accumulated during his lifetime in the business. This permits respondents to prepare "customized" collections from practically any country or area of the world. The "customized" collections range in cost from $12 to $250 and are also sent out on an "approval" basis. It would be rare for respondents to send out a $250 collection on approval (Tr. 186, 187).

12. Mr. Portwood testified (and is uncontradicted in the record) that about 99 percent of the persons to whom respondents mail stamps on approval are stamp collectors (Tr. 44, 55).

13. Respondents do not advertise their stamps, and they have not done so for the last seven or eight years. They may use the mails to advertise new albums or other philatelic supplies (Tr. 27).

14. The Portwoods maintain two "lists" or "files" on their business premises. The "master" file has from 80,000 to 90,000 names, and the current or active file has about 6,000 names. Names in the active file are duplicated in the master file. It is the 6,000-name file from which current mailings are made (Tr. 148–9). Names of mailees whom respondents desire to discontinue are removed from the active file and are replaced by names from the master file (Tr. 149–50). From time to time respondents purchase mailing lists of stamp collectors. These mailing lists are supposed to contain the names of stamp collectors only and are utilized to keep the active files current, and to replace those accounts that have been removed from the active file (Tr. 44–46).

15. Not more than a few hundred of respondents' 6,000 active accounts would be mailees to whom respondents had not made a previous sale (Tr. 187–188, 201, 202). Respondents have "quite a few customers" to whom they have been selling stamps since they established the business in 1948 (Tr. 188). They have been dealing with a very substantial part of their customers for a good many years (Tr. 188).

16. In addition to the purchase of mailing lists of stamp collectors, respondents' files have been built up over the years because of Mr. Portwood's continuous involvement in the stamp business. Mailing lists are purchased from professional sellers of mailing lists. Names are also obtained by the recommendations of other Portwood customers. Occasionally, The Portwood Company will exchange information with other stamp dealers as to prospective purchasers (Tr. 27). Respondents have not used the advertising method of selling stamps for the last seven or eight years (Tr. 27).

17. The names of prospective purchasers on the 6,000-name list are mailees who are either in current possession of respondents' approval sheets or are scheduled to receive them.

18. Respondents' account cards are transferred from their active (6,000-name list) to their inactive list because the mailee fails to purchase stamps or purchases them in such small quantities that the business is not profitable; or the mailee instructs Portwood to drop him or her from the mailing list; or the mailee changes his collecting habits; or there has been a change in the mailee's financial status (Tr. 34).

19. Respondents' mailees may be dropped because they exhibit "dishonesty" or "extra carelessness" in the handling of the merchandise (Tr. 34). Portwood characterized "dishonesty" as an act of removing stamps from the approval books without paying for them or as the unauthorized breaking of sets of stamps that are offered only as a complete set (Tr. 34); or other behavior that would indicate the unreliability of a mailee.

20. Mr. Portwood testified (and is uncontradicted in the record) that thousands of stamp dealers mail philatelic stamps on approval and that there must be about the same "thousands" who mail unsolicited approvals under "certain circumstances." (Tr. 164.) The wholesale trade publication, *The Stamp Wholesaler* sells between 8,000 and 9,000 copies per issue (Tr. 164–165). It is sold chiefly to stamp dealers who have proven themselves as such. Mr. Portwood estimated that there must be approximately 5,000 professional stamp dealers in the United States who mail philatelic stamps on approval (Tr. 164–165). He defined "approval" dealers as (a) those who mail unsolicited approvals, (b) those who mail solicited approvals, and (c) a combination of both (Tr. 166). Mr. Portwood further testified that almost all stamp dealers mail stamps on approval. Those sending out unsolicited approvals could not be very much less than the total number of stamp dealers (Tr. 167). The figures testified to by Mr. Portwood constitute only an estimate based upon his personal opinions and his more than thirty-five years of experience in the business (Tr. 174).

21. The Portwoods' average sale is about $3 (Tr. 16). The small sum involved in each transaction is significant. It is unlikely that respondents could or would use the services of a lawyer to collect such small amounts, yet respondents threaten their mailees that delinquent accounts will be turned over to lawyers. Commission Exhibit No. 7 is one form of "collection" letter which respondents use. The letter reads:

> Our shipment of _____ is now long past due, and although we have written to you on five occasions, you have not extended us the courtesy of a reply.
>
> Unless we receive payment in full, or return of the stamps and payment for any retained, by _____, your account will be turned over to our attorneys for immediate action.
>
> Please cooperate at once!
>
> Very truly yours,
>
> THE PORTWOOD COMPANY,
> (S) T. E. DETTEN,
> *Collection Manager.* (CX 7.)

22. Mr. Portwood testified that he had never turned an account over to an attorney for collection, and does not have an attorney to whom he would refer such small collections. If an attorney were to become involved in collecting for the Portwoods, it would be only because respondents had turned an account over to the Federal Claims and Adjustment Bureau, a collection agency (Tr. 52, 53, 146, 147, 148). Mr. Portwood did not know whether the Federal Claims and Adjustment Bureau did, in fact, utilize the services of an attorney. He *surmised* that it might. Portwood admitted that he had threatened mailees with turning their accounts over to an attorney for legal action when, in fact, he had no attorney and did not intend to employ one (Tr. 148).

23. It is found that one of respondents' deceptive acts is to threaten to turn accounts over to attorneys for legal action when, in fact, respondents have not done so and did not intend to do so. This coercive technique is false, misleading, and deceptive, and should be enjoined. The threat of legal action is particularly coercive and deceptive if made to mailees who owe no legal obligation to respondents but who may be made to believe, contrary to the fact, that they do have some legal obligation. At least two classes of mailees are under no legal obligation to respondents: (1) those with whom respondents have had no previous dealings, and (2) those to whom stamps are mailed on approval in direct violation of the mailee's specific instructions not to mail.

24. When the Portwoods mail one of their approval books (CX 1) to a mailee for the first time, they usually enclose a set of stamps as a gift to the mailee (Tr. 178–179). These stamps are given for the mailee's

courtesy in examining the approval stamps (Tr. 29–30). The gift is not contingent upon the purchase or the return of the approval stamps (Tr. 181). The stamps are accompanied by an "Approval Invoice" (CX 2) and a self-addressed, stamped envelope (CX 3; Tr. 29).

25. If a mailee receiving a selection of stamps as typified by CX 1 does not communicate with The Portwood Company, such mailee is then sent communications similar to CXs 4, 5, 6, and 7 (Tr. 9–12, 35) as follows:

JUST A REMINDER . . .

That we have not heard from you with regard to the selection of stamps sent to you some time ago.

Will you please give this matter your prompt attention?

Thank you. (CX 4.)

We wish to call your attention to the selection of stamps sent to you on . . . .

This material was forwarded to you on approval, for your examination, with the understanding that returns would be made promptly.

Will you kindly give this matter your immediate attention so that we may clear your account. (CX 5.)

The use of the word "understanding" in CX 5 is false, misleading, and deceptive, because, in fact, there was and is no "understanding" between respondents and the mailees to whom such form is customarily sent. Respondents have admitted the possible deception in this form and have changed the word "understanding" to "expectation" (Tr. 204–5).

I dislike to continue to annoy you in this way, but there is no help for it, if you persist in refusing to answer our correspondence.

If there are reasons for your taking this attitude, please be kind enough to explain them.

This is the *fourth* piece of first class mail which we have sent to you. This mail has not been returned by the Post Office Department, so it must have been delivered.

You have our property in your possession, and have had it for a long time. What do you intend to do about paying us for it? (CX 6.)

Our shipment of ---------- is now long past due, and although we have written to you on five occasions, you have not extended us the courtesy of a reply.

Unless we receive payment in full, or return of the stamps and payment for any retained, by ----------, your account will be turned over to our attorneys for immediate action.

Please cooperate at once! (CX 7.)

26. Commission Exhibit No. 4, *supra*, captioned "Just A Reminder" is sent by respondents to their nonresponding mailees approximately 30 days after the approval sheets are mailed, and again 30 days thereafter (Tr. 57). Respondents' communication, CX 5, *supra*, is sent 3 to

4 weeks after the last mailing of CX 4, and is then followed in 30 days by CX 6. Commission Exhibit No. 7 is sent out after six months have passed since the initial mailing (Tr. 56–58).

27. Practically all of respondents' sales are made through the mails. Although this proceeding does not involve walk-in customers, respondents could serve walk-in customers on the premises at 122 Yale Boulevard, SE., Albuquerque, New Mexico, but such customers are rare. (Tr. 16, 17. See Finding 9, *supra.*) In 1965 respondents did $85,000 worth of business of which approximately $7,900 was the business of the Harry Arthur Company (Tr. 158).

28. Complaint counsel has introduced into evidence part of respondents' records for some mailees. These will be briefly summarized. Complain counsel particularly emphasizes respondents' representations to:

Else Baumann (CXs 9, 85, 88; Tr. 39).

Respondents sent Mrs. Baumann some unordered stamps. Mr. Portwood, believing that Mrs. Baumann had retained $3 worth of stamps without paying for them, wrote to her on February 5, 1965, as follows:

DEAR MRS. BAUMANN: We have received the return of our approval book #R–2, and find that stamps have been removed on almost every page.

The total net value of the stamps thus taken comes to $3.00, which is the amount you are to send us at once, unless you want this matter turned over to the Postal Inspectors in Vancouver.

Since evidence of your using the mail to defraud is readily available, in the book itself, we suggest that it would not be wise to delay sending your payment. We are *not* interested in having any of the stolen stamps sent back to us. Payment may be made by cash or money order. Thank you. (CX 9.)

On February 24, 1965, Mrs. Baumann replied:

In reply to your most insulting letter of Febr. 5, let me assure you that I did not take a single stamp out of that envelope.

Should I hear from you again I shall immediately contact not only my lawyer but also the Better Business Bureau to protect the public from similar offences of this kind. (CX 85.)

On March 11, 1965, respondents wrote Mrs. Baumann:

MRS. ELSE BAUMANN,
308 West 3rd Avenue,
Vancouver 8, B.C., Canada.

1/27/65 Balance $3.00

Unless we receive payment in full by March 20, 1965, your account will be turned over to our attorneys for immediate action.

NOTICE

This account will be turned in for Collection to Federated Claim Adjustment and Collection Bureau on 3–22–65 unless paid _____. (CX 88.)

If Mrs. Baumann had retained $3 worth of the unordered stamps that were sent her and if she had converted them to her own use,[4] returning only the remainder, she may have become obligated to pay for the stamps she retained. However, the record is inconclusive as to many details of the Baumann transaction. Mrs. Baumann denied retaining any stamps. Mr. Portwood could not testify whether he had previous dealings with Mrs. Baumann prior to this incident. The communications from respondents to Mrs. Baumann considered in their entirety contained false, misleading, and deceptive representations and innuendoes. Mr. Portwood admitted that he had been angered by the incident and that his language was intemperate. Having in mind the special business *milieu* that respondents create between themselves and their mailees and in which *milieu* respondents operate, respondents are not and were not in the Baumann case in a position to accuse her of "using the mails to defraud," nor should respondents under such circumstances threaten to turn an account over to the postal inspectors. Respondents knew and know that a mailee, such as Mrs. Baumann, had no legal obligation to them. Respondents' use of coercion and intimidation based upon the false innuendo that there was a legal obligation was and is false, misleading, and deceptive and proscribed by the Federal Trade Commission Act.

29. Respondents do obtain satisfactory response to 90 percent of their mailings without resorting to objectionable or unlawful language. Respondents jeopardize this 90 percent satisfactory response by the manner in which they deal with the unsatisfactory, unresponding 10 percent. The *Baumann* evidence demonstrates that respondents' *modus operandi* does have the tendency and capacity to deceive, inconvenience, harass, and intimidate their mailees and constitutes an unfair business practice that is proscribed by Section 5 of the Federal Trade Commission Act, as alleged in the complaint.

30. In addition to the Else Baumann transaction, complaint counsel also introduced some of respondents' records concerning the following:

Mr. F. Joerns (CXs 10, 11, 12, 13).

Mr. Joerns wrote to respondents on November 5, 1964, asking them not to send any more stamps. But more were sent on February 18, 1965. Even though he had requested no further mailing, Mr. Joerns purchased merchandise on fourteen separate occasions (Tr. 68–69) including the very next mailing that respondents sent to Joerns after he told them to stop.

[4] There is no proof of this fact in the record.

Mrs. Ollis Sherbon (CXs 14, 15, 16, 17).

On April 26, 1966, Mrs. Sherbon requested respondents not to send merchandise to her for a certain period of time—"until next October" (Tr. 71). Nevertheless, on June 8, 1966, respondents mailed merchandise to her.

Mr. V. C. Thyrring (CXs 18, 19 A–B; Tr. 71).

Mr. Thyrring wrote on the approval invoice dated December 6, 1965:

> Tax time is coming up now—will not be interest[ed] in stamps. * * * Please do not send approvals until I request some. (CX 19 A–B; Tr. 72.)

After a wait of approximately four months, stamps were mailed to Thyrring. Respondents' Exhibit No. 1A is a return to respondents of approval invoice of May 17, 1966, from Mr. Thyrring with a check for $12.50 enclosed to pay for the entire shipment (Tr. 74). Mr. Portwood testified in substance (Tr. 75–76) that the only way he could keep Thyrring as a customer was to ignore Thyrring's request not to send stamps—and to send stamps in spite of the request.

> * * * I also feel that after three or four months time has elapsed, I am not being particularly disagreeable to the man, when I submit another sample of my merchandise to him. I don't expect him to become irate about it, and he does not, and I would be quite surprised, if he did.

Doris Branson (CXs 20, 21, 22, 23, 24, 25; RX 2 A–D).

Doris Branson wrote to respondents "do not send approvals to me unless requested" (CX 21). Nevertheless approvals were sent approximately two months after Mrs. Branson's request, and respondents made two sales to Mrs. Branson after being requested not to mail any more stamps to her. Mrs. Branson purchased $17.30 from a mailing of $19.50. (RX 2 A–D; Tr. 77, 79). Mrs. Branson has purchased stamps on each occasion that respondents sent them to her, even though she requested respondents to discontinue sending approvals.

Raymond C. Brainard (CXs 26, 27, 28, 29, 30 A–B, 31 A–B; Tr. 81–86).

Mr. Brainard by note dated July 26, 1965, wrote to respondents:

> *Please do not send any more stamps.* I have been sick in bed that is reason for the delay in get[ting] returns to you. (CX 31 A.)

On September 20, 1965, respondents made an unordered shipment to Brainard (Tr. 81). After twice sending Brainard a reminder (CX 4), respondents then sent him the so-called "lawyer's statement" (CX 31 B), which reads:

Our attorney wishes to take over your account in order to institute legal action. We certainly hesitate to take such a course without giving you the opportunity to straighten out this matter first. Won't you please settle your account now? Thank you. (See also Tr. 83.)

Brainard has been a good customer of respondents since 1954 and has purchased several hundred dollars worth of merchandise (Tr. 84). Inasmuch as respondents had sent stamps to Brainard in violation of Brainard's instructions not to do so, Brainard was under no legal obligation to respondents. Respondents' letter to Brainard was coercive and based on false and misleading innuendo.

Mrs. Ethel Johns (Tr. 87; CXs 32, 33).

Mrs. Johns wrote:

I am now on welfare and do not have the money to buy many more stamps. If I could trade some of my duplicates for others I would like it very much. * * * Do you trade stamps? Or do you know of any company that does? (CX 33.)

In spite of this communication, respondents sent stamps to Mrs. Johns which she purchased, writing "I am keeping them, although I cannot afford them." (Tr. 88.)

Mrs. Edward F. Gunnill (CXs 34, 35, 36, 37, 38, 39; Tr. 89, *et seq.*).

Under date of June 7, 1960, Mrs. Gunnill wrote to respondents, in response to one of their communications (CX 39):

Ill tempered letters are nothing to be proud of—and *not* good business. How do you know what attitude I have? * * * I intend fully to pay *as usual*—and always when I can and no sooner. This "property" was not requested. In fact I have asked that the shipments be less in value. But *you* keep pushing them on *me*. Naturally I like my son and end up by purchasing them. But if I paid for them sooner—you'd just send another batch immediately. I cannot afford these $24 to $29 approval orders *each* month, you know. *Could you?* Please cancel my name from lists.

Respondents' Exhibit No. 3 A-C, is a return of respondents' invoice of January 4, 1966, by Mrs. Edward F. Gunnill, together with her check of $10.75. She bought the shipment completely and made no comments.

Mrs. A. B. Chagnon (Tr. 96; CXs 40, 41).

On May 3, 1966, Mrs. Chagnon wrote respondents:

This is my last order, I find the price of your stamps too high. I can get them at 30% to 40% less. So please, do not sen[d] me any more approval stamps. I wish to thank you for your services which I appreciated very much.

Your truly,

Mrs. A. B. CHAGNON (CX 41).

On June 8, 1966, another selection was sent to Mrs. Chagnon and from that mailing she purchased $2.05 in stamps (Tr. 98).

George F. Mahoney (Tr. 99, *et seq.;* CXs 42, 43).

On April 28, 1966, Mr. Mahoney wrote to respondents:

> Gentlemen—I am returning the latest shipment intact. When I paid for the last previous shipment I stipulated that no more be sent until I requested them. That stipulation still stands. In addition, most of the items in this lot have been submitted previously. George F. Mahoney (CX 43).

In spite of Mr. Mahoney's request to the contrary, a further shipment was sent (Tr. 100), and Mr. Mahoney made a purchase of stamps from the shipment and paid $2.20 for them (Tr. 160).

J. Miles (Tr. 101–02; CXs 44, 45).

On March 19, 1966, Mr. Miles wrote:

> Please take notice. I do not wish any more approval selections. Several selections from other compan[ies] have been disappearing somewhere in the mail. I have been held responsible for the loss of same and I do not want any more of this. (CX 45.)

On March 19, 1966, and on April 25, 1966, shipments were sent to Mr. Miles in spite of his request. The last shipment was received back by the respondents without a purchase and with a note "Please do not send any more stamps until further notice." (Tr. 102.)

Albert J. Biddiecombe (Tr. 103; CXs 46, 47).

Mr. Biddiecombe wrote to respondents:

> Please Do NOT send me any more Approvals as I have sold my Stamp Collection. Any future Approvals received will be marked "REFUSED" and "RETURN NOT ORDERED." (CX 47.)

A shipment was sent to Biddiecombe about six weeks after this letter was received (Tr. 103). The following testimony appears at Tr. 105:

> Hearing examiner GROSS: Let me ask the witness a question. Mr. Portwood, when a man writes you and says that he has sold his collection, and you still send him stamps, does that happen very often?
>
> The WITNESS: Very often, sir. They do not sell their collections, and if they do, they can't stop collecting. They will wait a certain time, and then they are as likely to be interested again, as they were in the first place. Adult stamp collecting is not a hobby that you give up easy, if you were ever really engrossed in it. We found that out, and some of our behaviors [sic] occur by the fact that we do know that.
>
> Hearing examiner GROSS: So, what you are telling me, in substance, is when they say they gave up stamp collecting, they really don't mean it?
>
> The WITNESS: The same as some of them will say the don't want to buy any more, and they do. (Tr. 105.)

George McWilliams (Tr. 106–07; CXs 48, 49).

Mr. McWilliams wrote to respondents:

> *Please* take me off your sucker list. (CX 49.)

Mr. Portwood was unable to testify postively that stamps had been sent to Mr. McWilliams after this communication but he assumes they were.

R. H. Currie (Tr. 108; CXs 50, 51).

Mr. Currie wrote to respondents:

This selection of approvals was not requested by the writer although part of the selection is being retained. Do Not, repeat, Do Not send any more stamps on approval. (CX 51.)

Another shipment was made to him approximately five weeks after this communication (Tr. 108).

Wayne F. Dieson (Tr. 109; CXs 52, 53).

Mr. Dieson wrote:

Please withhold future approvals until notified. (CX 53.)

Another selection was sent to Mr. Dieson on June 10, 1966, in spite of his instructions to the contrary. Dieson had made eight different purchases from respondents and all shipments to him had been accounted for (Tr. 110, 161).

Wallace J. Morrison (Tr. 112; CXs 54, 55).

On February 23, 1966, Mrs. Morrison wrote:

Please send no more stamps as we are moving to Connecticut and as yet have no formal address. (CX 55.)

On April 29, 1966, about five weeks after receipt of the note, a shipment was made to his old address. Mr. Portwood did not know whether the shipment had found its way to Mr. Morrison's new address (Tr. 113).

David Mackay Grant (Tr. 114; CXs 56, 57).

On approval notice dated February 11, 1966, Mr. Grant wrote:

Please do not send any more unless asked to do so. (CX 57.)

John M. Christianson (Tr. 115; CXs 61, 62, 63, 64).

Mr. Christianson made in excess of 30 purchases. On approval invoice dated June 9, 1966, he wrote:

Please don't send stamps until further notice. I will just returned [sic] them. I sent a noticed [sic] before saying not to send stamps until my husband comes home in December. Thank you. (CX 64.)

The note was received on June 22, 1966, and the account card was marked to send the next shipment in December 1966 (Tr. 115–116).

Mark Machtemes (CXs 65, 66 A–B; Tr. 116–120), whose mother wrote:

Thank you for your nasty letter. It brought me to action. Who in the world asked for the stamps. If you want them back come & pick them up. You can have them. They are still in original letter. Good Housekeeping latest issue had an article concerning your type of racket. If I send these back to you or paid for them you'd keep sending unwanted stamps. We are too busy to monkey like that. If we want stamps we'll sen[d] for them, the ones we want. One more smart letter & we'll turn you into postoffice dept. for investigation. Please return me 5¢ for this letter not mentioning my time. Mrs. Machtemes, Mother of Mark. (CX 66 A–B.)

The account was discontinued. Mrs. Machtemes returned the stamps. That is all the record shows for this particular mailee (Tr. 120). The quoted letter speaks for itself.

Nelson Wright (Tr. 121; CX 58 A–B).

Respondents wrote to Mr. Wright on September 25, 1959, as follows:

We are in receipt of your returns covering the selection of stamps recently sent to you, and thank you for same.

May we call your attention to the fact, that in checking your returns, we found that a number of stamps had been removed from sets and other stamps put in their place. In the past we have had this happen a few times and have usually found out that the selection was given to another collector to inspect or that it was left where youngsters could get access to it. The switch is made at that time and you are unaware of it.

We are returning these stamps that do not belong to us, and have charged your account with $1.10 to cover the stamps missing.

A new selection is enclosed which we hope you will find of interest at this time. (CX 58 A.)

Mr. Wright's reply reads as follows:

I have no idea what this is all about but *suppose that, since I was foolish enough to do business with you before, I'm stuck*—so my check is enclosed in the amount of $1.10.

Rest assured of one thing, any approvals you mail to me in the future will be returned to you with the post office stamp "Delivery Refused" on them.

NELSON WRIGHT.

(Italic supplied) (CX 58 B).

Mr. Wright's language "suppose that, since I was foolish enough to do business with you before, I'm stuck" illustrates specifically how respondents mislead their mailees as to the true legal obligations of such mailees to respondents. Mr. Wright legally was not "stuck" but respondents' representations and innuendoes in CX 58 A created a contrary, false impression.

J. A. Meagher (Tr. 123–26; CX 59 A–B).

On the back of CX 59 A there is a notation: "You may send us if you include return postage."

Mr. Portwood interpreted Mr. Meagher's communication to mean that Mr. Meagher would be willing to receive shipments of stamps on

approval provided the respondents furnished return postage (Tr. 126). On January 14, 1964, respondents wrote Meagher as follows:

> We are in receipt of your reply to our letter of December 31st.
>
> A check of our files shows that no direct order for the selection of stamps was received from you. Your name and address were forwarded to us by another collector, with the request that we send you a gift set of stamps and one of our approval books for your examination.
>
> Many of our customers are recommended/to us in this manner. From your notations it is apparent that you did not authorize this mailing, and we are sincerely sorry. It is not our object to annoy or inconvenience collectors.
>
> A stamped return envelope is being enclosed. Thank you for your cooperation, and with apologies for any inconvenience caused you, we are, * * * (CX 59 A).

31. Other mailees of respondents are mentioned in the transcript, but a resume of the evidence concerning these individual mailees would not add to an understanding of the thrust of the evidence.

32. Respondents' practice of mailing selections of stamps on approval to persons who have directed that such selections not be mailed is done entirely at respondents' risk. The mailees are under no obligation to pay for such stamps or to return them. Respondents have been specifically directed by certain mailees not to send stamps; and by sending stamps thereafter, respondents have violated the mailees' instructions. The mailees have no legal obligation to account to respondents for such stamps, even though a prior course of dealing (*supra*, p. 7, *Hobbs* v. *Massasoit Whip Co.*) may have established a prior legal relationship between respondents and such mailees as to such prior business transactions. When respondents ignore the mailees' directions, the respondents "cannot turn the offer [their mailings] into an agreement, as the offerer cannot prescribe conditions so as to turn silence into acceptance." See *supra*, *Columbia Malting Co.* v. *Clausen-Flanagan Corporation*, 3 F. 2d 547, 551.

33. It is conclusively proven in the record that respondents mail stamps on approval to mailees in spite of and contrary to such mailees' instructions not to mail the stamps. The record further shows that in spite of their instructions not to mail them any more stamps, some of respondents' mailees, nevertheless, accept the stamps, make selections therefrom, and pay for them. This explains, in part, respondents' ignoring these instructions not to mail. As Mr. Portwood testified:

> Adult stamp collecting is not a hobby that you give up easy, if you were ever really engrossed in it. We found that out, and some of our behavoirs [sic] occur by the fact that we do know that. (Tr. 105, *supra*.)

Respondents are not privileged to exploit this human weakness in the manner and to the extent reflected in this record. Respondents' decep-

tive representations, and their innuendoes, concerning their mailees' legal obligations, are responsible, to an unmeasured extent, for some mailees purchasing and paying for stamps even though such mailees are not obligated to do so.

34. The hearing examiner must reject Mr. Portwood's unsupported statement that the mailees do not mean what they say when they direct respondents not to send them any more stamps. Any stamps sent to mailees contrary to their instructions are sent solely at respondents' risk and any innuendo or representation to the contrary is false, misleading, and deceptive.

35. Respondents' communications to mailees who have directed respondents not to send them any stamps are false, misleading, and deceptive unless the communications make it unmistakably clear that the stamps are being sent contrary to instructions and at respondents' risk and that the mailees have no obligations therefor to respondents.

36. Complaint counsel has proven by reliable, probative, and substantial evidence that respondents, Joseph L. Portwood and Betty Portwood, trading and doing business as The Portwood Company, in the conduct of their mail-order philatelic stamp business have represented and do represent to persons to whom they mail their stamps on approval, *contrary to the fact:*

(1) That money is due or owing to respondents from the mailees for the unordered selection of stamps;

(2) That some contract, agreement, or understanding exist between respondents and their mailees to pay for the unordered approval stamps or to return them to respondents;

(3) That if the approval stamps are not paid for or returned, the matter will be referred to attorneys for collection, even though respondents do not, in fact, intend to refer the matter to attorneys for collection, and

(4) That a person who has not returned unordered selections of stamps has stolen such stamps and such person is using the mail to defraud.

37. Complaint counsel has further proved, and the examiner finds, that respondents' practices of sending philatelic stamps on approval to mailees who have not requested such stamps, or to mailees who have directed that no stamps be sent to them, and of attempting, thereafter, to exact payment for such stamps has had, now has, and may have the capacity and tendency to confuse many of such mailees and to create doubt in their minds as to their rights and legal obligations in respect to such approval stamps. The practices in which respondents engage cause many of their mailees to pay for stamps for which they

are not obligated to pay because respondents misrepresent the legal obligation of the mailees to respondents. Respondents' practices, have had, and now have the tendency and capacity to harass, inconvenience, intimidate, and coerce, and do harass, inconvenience, intimidate, and coerce some of their mailees into purchasing and paying for stamps, even though such mailees are not obligated to do so.

38. Respondents' acts and practices, as set forth herein, constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce and are proscribed by the Federal Trade Commission Act.

39. Many sellers of different lines of products other than philatelic stamps ship unordered merchandise through the mails. They seek to collect for such unordered merchandise, even though the mailee is under no obligation either to pay for the merchandise or to return it. The records of the Federal Trade Commission disclose this technique is used by business firms other than those mentioned in this initial decision. Nonprofit and "charitable" organizations use the unordered merchandise technique in attempting to obtain "contributions." Mr. Portwood's testimony (Tr. 164–167) that thousands of stamp dealers ship stamps on approval; that almost the same number of thousands ship these stamps unsolicited (Tr. 164); and that there "must be five thousand professional mailers of approvals" in the United States, emphasizes the need to prevent "unfair methods of competition" and "deceptive acts or practices" by those who use this technique.

40. As previously found, respondents' deception is not the act of mailing unordered merchandise, but the representations that accompany such mailings and that are made thereafter. Upon this record it appears, therefore, that the following order ought to be entered:

ORDER

It is ordered, That respondents Joseph L. Portwood and Betty Portwood, individually and trading and doing business as The Portwood Company, or under any other trade name or names, or through any corporate or other device, their agents, representatives, or employees, in connection with the offering for sale, sale, or distribution of philatelic stamps, philatelic supplies, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

68 Order

(1) Misrepresenting, directly or by implication, or by innuendo, the legal relationship, if any, that exists between respondents and the mailees to whom respondents send their philatelic stamps, philatelic supplies, or other merchandise;

(2) Misrepresenting, directly or by implication, or by innuendo, the legal obligations, if any, of respondents' mailees to respondents;

(3) Using threats, intimidation, or coercion (including the threat of legal action) to compel respondents' mailees to perform any act or to refrain from any act that such mailees are under no legal obligation to perform or to forego;

(4) Resorting to any subterfuge, scheme, or coercion to sell their merchandise to persons with whom they have never had any previous business dealings;

(5) Resorting to any subterfuge, scheme, or coercion to sell their merchandise to persons who have indicated to respondents that they do not desire to purchase such merchandise;

(6) Sending any communication (including bills, invoices, reminders, letters, or notices) to, or making any demands of any person that seeks to exact payment for or the return of merchandise sent without a prior request by the recipient, unless such communication clearly and conspicuously states that the recipient is under no obligation to initiate the return of such merchandise and that, unless the recipient uses such merchandise, the recipient is under no obligation to pay for such merchandise;

(7) Representing, directly or by implication, contrary to the fact, that respondents will refer "accounts" to any other organization, attorney, or firm of attorneys for collection or for legal action;

(8) Misrepresenting in any manner the legal consequences of their mailees' failure to pay for or return merchandise that has been sent to said mailees without a prior order therefor or in spite of specific directions from said mailees not to send such merchandise; and

(9) Sending merchandise without first obtaining a specific order therefor after respondents have been notified by the mailees that shipments of unordered merchandise are to be discontinued.

OPINION OF THE COMMISSION

JANUARY 19, 1968

BY JONES, *Commissioner:*

This case comes before the Commission on cross appeals of respondents and complaint counsel to the hearing examiner's Initial Decision and Order in which he found that respondents had used unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act [1] in selling philatelic stamps and supplies by mail.

I

The gravamen of the deception charged in the complaint is respondents' use of various false and misleading representations to induce recipients to pay for or return the merchandise which it sends unsolicited to customers, both new and old. The complaint alleges that respondents' practices and representations in connection with this merchandise have the capacity and tendency to confuse many persons, to create doubt in their minds as to their rights and legal obligations and to harass, inconvenience, intimidate and coerce persons into paying for the unordered merchandise sent by respondents.[2]

The answer of respondents admitted the descriptive and jurisdictional allegations of the complaint.[3] The answer generally admitted the complaint's allegations as to respondents' method of doing business, and acknowledged the texts of the communications set forth in the complaint as examples of the alleged deceptions.[4] Respondents denied, however, that all the quoted representations were typical. Further, respondents specifically denied that they misrepresent to their customers the nature of their mailees' legal obligations with respect to the payment or return of the merchandise and denied generally that their practices and representations violated Section 5 of the Federal Trade Commission Act.

The examiner found that respondents have represented to their customers—contrary to the fact—that money is due or owing to respondents for the unordered stamps, that a contractual obligation exists on the part of respondents' mailees to pay for the stamps or re-

[1] 66 Stat. 631 (1952); 15 U.S.C. § 45 (1964).

[2] Complaint, pars. 4–7.

[3] Respondents originally denied that Betty Portwood is trading and doing business as The Portwood Company either individually or jointly with her husband. However, they do not appeal from the examiner's finding upholding the joining of Betty Portwood individually and jointly with her husband as The Portwood Company.

[4] Complaint, par. 4; and CXs 1–7, and 9.

turn them, that their failure to pay for the stamps will result in respondents' referring the matter to an attorney for collection and that a person failing to return the stamps has stolen the stamps and is using the mails to defraud (ID 36). The examiner concluded that respondents' practice of sending stamps to persons who have not ordered them or who have specifically directed that no stamps be sent to them has the capacity and tendency to confuse mailees as to their obligation to pay and to deceive, inconvenience, harass, intimidate and coerce them into paying for stamps even though they are not obligated to do so in violation of Section 5 of the Federal Trade Commission Act (ID 37–39).

The proposed order entered by the examiner prohibited respondents from misrepresenting the legal relationship and obligations that exist between respondents and the recipients of respondents' unordered merchandise and from using threats, intimidation or coercion to compel recipients of the unordered merchandise to do or refrain from any act that they are under no obligation to perform or forego. The order prohibits respondents from resorting to subterfuge, scheme or coercion in selling their merchandise and requires repondents to disclose to the recipients of this unordered merchandise that they are under no obligation to initiate the return of such merchandise and that, unless they use such merchandise, they are under no obligation to pay for it (ID 34–36).

On this appeal, complaint counsel contends that the hearing examiner has made inconsistent findings as to which aspects of respondents' practices and representations are deceptive and asks the Commission to clarify the asserted ambiguities in his Initial Decision by finding that the deception in respondents' method of doing business inheres in all of its communications with its mailees accompanying and following mailing of the unordered merchandise (Appeal Brief of Complaint Counsel, p. 7). Complaint counsel also urges that certain clarifying modification of the language of the proposed order be made.

Respondents deny that the communications sent to its mailees contain any misrepresentations of fact or are unfair or deceptive and argue further that many of the hearing examiner's findings are either incomplete or unsupported by the evidence or represent conclusions of law rather than findings of fact or are ambiguous and inconsistent and do not support the breadth of the order proposed by the examiner as it relates to all of respondents' communications to the recipients of unordered merchandise (Respondents' Brief, pp. 29–40).

Respondents also appeal from the order proposed by the examiner and in particular challenge the portion of paragraph 6 of the pro-

posed order requiring the disclosure with respect to the obligations of respondents' mailees to pay for or return the stamps. Respondents argue that they have not as a matter of law misrepresented the obligations of their mailees with respect to this unordered merchandise, that the required disclosure in paragraph 6 does not correspond to the applicable law, and that, in any case, the Commission has no authority or power to require respondents to advise their customers of their rights not to pay for or initiate the return of unused merchandise (Respondents' Brief, pp. 40–53).

II

The record in this case respecting the manner in which respondents operate is largely uncontroverted. Respondents send unordered stamp selections to some 6,000 prospective customers whose names have been obtained by them from various lists of purported stamp collectors and from various other sources.[5] The unordered stamp selections are sent together with an "Approval Invoice" stating the price of the stamp selections and containing the legend "Please return this invoice with your payment." [6] A stamped, self-addressed envelope is also included.[7] If, after four weeks, the respondents hear nothing from the prospective purchaser, two identically worded postcards are sent several weeks apart advising the customer that "We have not heard from you with regard to the selections of stamps sent to you some time ago. Will you please give this matter your prompt attention?" [8]

If there is still no response from the prospective purchaser, a series of letters is sent, the first of which calls the prospective purchaser's attention to the selection of stamps sent and then states:

> This material was forwarded to you on approval for your examination with the understanding that returns would be made promptly. Will you kindly give this matter your immediate attention so that we may clear your account.[9]

The next letter is prefaced with "I dislike to continue to annoy you in this way, but there is no help for it, if you persist in refusing to answer our correspondence." The letter ends with the question, "You have our property in your possession, and have had it for a long time. What do you intend to do about paying us for it?" [10]

Should that letter fail, the prospective purchasers are given an ultimatum that "Unless we receive payment in full or return of the

[5] Tr. 27–31, 44–46.
[6] CX 2.
[7] CX 3.
[8] CX 4.
[9] CX 5.
[10] CX 6.

stamps and payment for any retained by [a certain date] your account will be turned over to our attorneys for immediate action." [11]

In addition to these form letters, there is evidence in the record that respondents sent individual mailees various threatening letters about their liability for stolen stamps either civilly or under the mail fraud act.[12] Moreover, respondents admitted that they continued to send stamps to mailees who had expressly written and directed respondents to discontinue sending unsolicited stamps.[13] These people, too, would receive the reminders [14] and the progressively more imperious letters if they ignored respondents' mailing.[15] Good customers of long standing would receive the same series of reminders and letters except that respondents might wait for a longer period before sending a reminder or a letter, (Tr. 58) and in some cases might use more careful language to avoid offending the customer (Tr. 35, 58).

Mr. Portwood testified that after the initial mailing of a stamp selection with the approval invoice and return envelope, about 80 percent of the recipients either buy some of the stamps or return them (Tr. 40–41). After the two reminders have been sent an additional 10 percent respond by either purchasing or returning the stamps (Tr. 42–43).

III

The first question presented by these appeals is whether the examiner was correct in finding that respondents' communications to their mailees are false, misleading and deceptive and whether those portions of the examiner's Initial Decision which appear to hold nondeceptive the approval invoice and the two followup postcards which accompanied the initial mailing of the stamps are inconsistent with this general finding and whether the portions referred to are correct or incorrect (CXs 1–4; ID 72, ID F .29).[16]

We find that respondents' communications to its mailees are carefully designed to create the impression—albeit in varying degrees of bluntness—that respondents' mailees must either pay for the merchandise or return it or suffer legal consequences. Thus the very first

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[11] CX 7.

[12] CX 9; Amendment of Answer, Tr. 52.

[13] *E.g.*, CX 41, 47, 51, 53; Tr. 96, 103, 108, 110, and record citations cited in ID F. 28 and 30.

[14] CX 4; Tr. 108.

[15] CX 5–7; Tr. 40–45.

[16] In Finding 40, the examiner states:

"As previously found, respondent's deception is not the act of mailing unordered merchandise, but the representations that accompany such mailings, and that are made thereafter. * * *"

Yet the language on page 72 of his Initial Decision and his Finding 29 could be read as indicating a finding on his part that respondents' original mailing with the approval invoice and the first two postcard followups (CX 2 and 4) were innocuous and not deceptive.

invoice instructs the mailee to "please return this invoice with your payment." Should the recipients of the unordered merchandise still ignore respondents' first communication instructing them to pay, they are first reminded to give this matter "prompt attention" and are then treated to a series of progressively more imperious letters calculated to make it clear to them not only that payment is due but that they will be in legal difficulties unless they pay.[17] Nowhere in any of respondents' communications is there any indication that the mailee has any choice about payment for this merchandise. Indeed it is not until after five or six communications have been sent that respondents' letters even refer to the possibility that the merchandise could be returned in lieu of payment.[18]

We are confronted here with a course of conduct and a sales method which in its implementation was clearly designed to coerce sales of respondents' merchandise by misrepresenting the consequences which might flow to their mailees unless they purchased the unordered stamps or returned them to respondents. We agree with the examiner that while the practices of respondents in shipping unordered merchandise to mailees is not by itself deceptive or unfair, respondents' mode of carrying out this practice was unfair and deceptive and in violation of law.[19]

However, some of the findings of the examiner might indicate views which are contrary to this conclusion. His Finding 29, for example, suggests that he viewed the first approval invoice which accompanies the unordered shipment and the first two postcard reminders sent some four weeks after the initial shipment as free of any deceptive representations. In Finding 29 and at page 72 of his Initial Decision the examiner noted that some 90 percent of respondents' mailees do in fact make payment for the merchandise after receipt of these initial communications and implies that this fact negates any deception inhering in these initial communications.

The examiner's Initial Decision also seems to reflect the examiner's belief that respondents' deceptions inhered only in their dealings with new customers with whom they had not previously done business (ID 72, 75).

We can find no significant difference in meaning and purport between the first approval invoice and subsequent postcard reminders and the remainder of respondents' followup communications nor be-

[17] CX 4–7.
[18] CX 7.
[19] ID F. 40.

tween respondents' general dealings with their mailees with whom they had previously dealt and their mailees who were new customers. Respondents' form communications were sent to all of their mailees without regard to whether they were old or new customers.[20] In our view each of respondents' form communications to their mailees, starting with the very first approval invoice are clearly designed to convey the impression that respondents' mailees are obligated to make payment for the merchandise. This premise is implicit both in the format and in the text of these communications. The fact that some 90 percent of respondents' mailees do in fact make payment for the merchandise after receipt of this initial invoice or the two followup postcards does not, in our view, alter their deceptive nature. Indeed this fact is entirely consistent with our conclusion as to the capacity of respondents' communications to mislead and confuse respondents' mailees as to their obligations with respect to this unordered merchandise.

We do not believe that it is appropriate to pick and choose among respondents' communications or to distinguish respondents' practices as between mailees with whom respondents had previous dealings and mailees with whom respondents had no such previous dealings or who have specifically directed respondents not to send any merchandise (*e.g.*, F. 23). Since respondents have not sought to distinguish between various categories of mailees in their general dealings with them, it is wholly inappropriate for us to speculate now on what types of communications might or might not be appropriate if respondents had elected in all cases to deal individually with each of their various mailees.

We are satisfied that respondents' communications to their mailees, regardless of their status as a new or old customer, make the representations found by the examiner in his Finding 36 and that these representations are false, misleading and deceptive and have the capacity and tendency to mislead and coerce all of respondents' mailees into accepting and paying for stamps whether or not absent such representations they would in fact have been willing to purchase such stamps.

To the extent that the Initial Decision of the hearing examiner and particularly Finding 29 might be read as conveying a contrary impression we specifically overrule that portion of it and hold, as we believe was the clear intent of the examiner in his Findings 36–40, that all of respondents' communications are misleading and deceptive and that its practices vis-a-vis all of its mailees, including old and new customers, are false, misleading and deceptive. We expressly overrule

[20] CX 4–7; *e.g.*, Tr. 9–12, 57–8.

the examiner to the extent that he has confined his findings and conclusions of deception and illegality to particular communications or to particular categories of mailees.

IV

The major thrust of respondents' argument on appeal is directed to paragraph 6 of the hearing examiner's proposed order requiring respondents to disclose to their mailees that they do not have to return the unordered merchandise and that they are under no obligation to pay for the stamps unless they use them. [21]

Respondents' arguments are two-pronged. First, they argue that the law respecting the obligations of their mailees does not accord with the disclosure. Second, respondents argue that the Commission is without power to require this type of affirmative disclosure and that in any event the other prohibitions in the order amply protect the public from any deception in which respondents might engage in the future.

Respondents' argument that the Commission is without power to require that affirmative disclosures be made is without merit. A long line of court decisions has consistently sustained the power of the Commission to require such disclosures when necessary to remove or prevent deception.[22]

There is little doubt that in the instant case only an affirmative disclosure of the rights of respondents' mailees can cure the deceptions and misrepresentations in which respondents are engaging.

Respondents' chosen method of doing business is to solicit sales by physically sending the merchandise directly to prospective customers. The gravamen of the deception which we have found in this case are respondents' constant representations made either explicitly or implicitly in every one of their communications to their mailees that

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[21] Paragraph 6 of the order proposed by the examiner provides that respondents shall cease and desist from:

"6. Sending any communication, (including bills, invoices, reminders, letters or notices) to, or making any demands of any person that seeks to exact payment for or the return of merchandise sent without a prior request by the recipient, unless such communication clearly and conspicuously states that the recipient is under no obligation to initiate the return of such merchandise, and that unless the recipient uses such merchandise, the recipient is under no obligation to pay for such merchandise."

[22] *Dorfman, et al.* v. *FTC,* 144 F. 2d 737, 738–39 (8th Cir. 1944); *Ward Laboratories, Inc.* v. *FTC,* 276 F. 2d 952, 955 (2nd Cir. 1960), *cert. den.,* 364 U.S. 827 (1960); *Waltham Watch Company* v. *FTC,* 318 F. 2d 28, 31–2 (7th Cir. 1963); *American Medicinal Products, Inc.* v. *FTC,* 136 F. 2d 426, 427 (9th Cir. 1943); *Haskelite Manufacturing Corp.* v. *FTC,* 127 F. 2d 765, 766 (7th Cir. 1942); *The J. B. Williams Company, Inc.* v. *FTC,* 381 F. 2d 884, 890–91 (6th Cir. 1967).

they are under a duty to pay for the merchandise which has been sent to them. Indeed respondents in their brief on appeal argue that such an obligation does exist with respect to some of their mailees and that at best it may exist with many others.

Thus respondents do not come before us accepting—at least for the purpose of argument—that deception has taken place and urging that a lesser remedy would suffice to remove the deception. Respondents are basically still arguing that their representations that payment is due are in fact accurate. In many instances, it is the tone of respondents' communications which conveys the notion of a payment obligation rather than the actual words used. For example, respondents' first invoice states imperiously: "Please return this invoice with your payment." Obviously this conveys the notion that payment is due and yet the representation is not made explicitly. Since many of respondents' misrepresentations are thus made indirectly or stand as the premise of the text of many of respondents' communications, it is unlikely that a mere prohibition against making these misrepresentations could ever be a sufficient remedy. In this situation, there is no effective way to cure the deception here unless respondents are required to make the affirmative disclosure that payment is not due unless the stamps are used.

There is an additional reason compelling the conclusion that respondents' deceptions here can only be cured by requiring respondents to inform their mailees of their rights with respect to this merchandise. Because of respondents' method of doing business, namely, of shipping merchandise without specific orders, its entire "sales pitch" vis-a-vis its potential customers must be directed to persuading them to purchase, *i.e.*, to pay for, this merchandise which they have already received. Thus its "sales" efforts, designed to solicit payment where none is yet due until the customer decides to use the merchandise, must inevitably carry within them the potentiality of deception. In this situation, it is obvious that a mere prohibition against making deceptive representations will be worthless since deception inheres in the very act of attempting to persuade respondents' mailees to purchase the merchandise. The only possible remedy which can offset the deception and protect the public is to require respondents, at the time they solicit payment, to make it clear to their mailees that payment is a voluntary act on their part and in no sense obligatory.

We hold that the disclosure to which respondents object is indeed not only the most effective, but also the only effective remedy here if

respondents' sales method is to be carried out without violating the law.

But respondents argue further that even if the Commission has such power to require affirmative disclosures, the particular disclosure required here is contrary to the law and hence is improper on this ground alone. Respondents seek to bolster their argument by elaborate citations to the Restatement of Contracts, to Corbin's and Williston's treatises on Contracts and to several old cases which stand for the general proposition that contractual obligations can arise by conduct of the parties and that offerees because of a prior course of dealing with the offerors, may, by their silence or inaction, manifest assent to a contract. We have no quarrel with any of the general principles of law cited by respondents in their brief. However, we find them irrelevant to the facts of the instant case and to the form of disclaimer which is in issue here in the order proposed by the examiner.[23]

Moreover, we believe that respondents, in making this objection to the order, wholly misconceive the statutory responsibilities of the Federal Trade Commission and confuse their obligations under the Federal Trade Commission Act with whatever remedies they may have under private civil law to collect payment for goods which they believe may be due and owing to them.

Respondents have engaged in a marketing program for the sale of philatelic stamps based on sending unsolicited shipments of these stamps to some 6,000 persons whose names have been culled from various mailing lists purchased by respondents. Respondents' solicitation of these potential customers takes the form of shipping merchandise with the obvious hope that by bringing its prospective customers into immediate contact with the merchandise, they will be induced to purchase. Thus, respondents do not conduct the bulk of their business on the basis of subscription or preorders, nor is their business one which rests in the main on long-term personal business relations built up with individual customers over the years. Nor is it respondents' practice to attempt collection of payment for their stamps.[24] Thus respondents themselves have never sought to invoke the common law in order to collect on allegedly delinquent debt. Instead respondents in the usual case simply drop so-called "non payers" from its active mailing list.[25]

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[23] The disclaimer required by the order goes to the recipients' payment obligations in the event the unsolicited merchandise is not used. Neither the cases nor the examples given in the treatises cited by respondents support the proposition that a recipient of unsolicited merchandise, whether an old or new customer, is under any obligation—contractual or otherwise—to make payment for such merchandise unless it is used.

[24] Tr. 34, 52–3, 151–52.

[25] Tr. 34, 151–52, 175, 176.

Thus, respondents by their own conduct make it clear that whatever the principles of law may be relative to express and implied contract or to the rights of bailees and the like, they do not operate the type of business to which these principles might possibly be applicable.[26]

Respondents' unsolicated merchandise shipment method of doing business is principally a form of promotion or advertising, something akin to the mail order or door-to-door solicitation methods of doing business. As such respondents' promotions and representations must be held to the highest standard of truth and honesty.

For respondents to attempt to invoke to their mailees some generalized principles of common law which may be wholly inapplicable to them is particularly reprehensible since they are dealing with laymen who would be inclined to believe that respondents, not they, are the experts in the law merchant. Since respondents have elected to adopt this form of sales technique involving as it does constant requests for payment and return, it is essential that they also must be the instrument for advising their mailees that no such obligation to return the merchandise or to pay for it arises unless the merchandise is used. Such advice is wholly accurate and it is, in our view, essential if respondents are to be permitted to accompany their shipments of merchandise with any communications at all which seek to solicit payment or return of the unordered merchandise.

In addition to their objections to paragraph 6, respondents also object to the provision of paragraph 9 of the order prohibiting them from sending any merchandise to those of their mailees who have expressly instructed respondents not to make any further unsolicited shipments. Respondents argue that this prohibition "deprives the businessman of the right to offer his merchandise for sale despite any possible reluctance of the prospective customer to buy same."

Paragraph 9 of the order only prohibits respondents from shipping unordered merchandise to the group of respondents' mailees who have given respondents written instructions to cease shipments. It does not prohibit respondents from soliciting the business of this group of mailees through sales literature or other techniques. Respondents' arguments against the propriety of the prohibition in paragraph 9 entirely misconceives the evidence in this case as well as the purport of this

[26] Respondents admit in their brief that whatever common law principles of contract or bailment may be depends entirely on the facts of each individual transaction (*e.g.*, Respondents' Brief, pp. 49–52). Yet as we noted earlier in our opinion, respondents made no effort to treat their mailees on any individual basis with attention to the facts of their particular relationship to respondents. Respondents' entire course of conduct with all of their mailees was premised on respondents' efforts to create the impression in the minds of these mailees that *all* of them were obligated to make payment or return. Respondents' own case law nowhere supports such a proposition.

paragraph of the order. The following excerpts from letters sent to respondents instructing them not to make further shipments (which the record shows were consistently ignored by respondents) typify the reasons why this prohibition is essential:

> Please take notice. I do not wish any more approval selections. Several selections from other compan[ies] have been disappearing somewhere in the mail. I have been held responsible for the loss of same and I do not want any more of this (CX 45).
>
> Tax time is coming up now—will not be interest[ed] in stamps * * *. Please do not send approvals until I request some (CX 19B; Tr. 72).
>
> * * * This "property" was not requested. In fact I have asked that the shipments be less in value. But *you* keep pushing them on *me*. Naturally I like my son and end up purchasing them. But if I paid for them sooner—you'd just send another batch immediately. I cannot afford these $24 to $29 approval orders *each* month, you know. *Could you?* Please cancel my name from lists (CX 39).

Other examples of these practices are summarized in the examiner's Finding 30. We believe that the evidence in this record overwhelmingly supports the necessity for this absolute prohibition in the case of this single category of respondents' customers.

In most forms of selling, consumers can implement their desires not to purchase or can avoid the temptation to purchase by not entering the store, by turning off the TV or radio or by refusing to open the door to the itinerant door-to-door salesman. If respondents here in the light of this record are not required to comply with express instructions received by them from their mailees not to make further unsolicited shipments, they would be left in the enviable position, not available to any other seller or advertiser, of in effect being able to coerce customers into purchasing their products. We will not leave respondents' mailees who have sought to "shut the door" on respondents' "salesmen" in this defenseless position. Respondents' mailees cannot exercise their right to resist making purchases by any of the usual self-help tactics which are available to them when other sales techniques are used. They can only exercise this right by instructing respondents not to make further shipments. This order, therefore, must constitute the "closing of the door" for these mailees when they have done everything they can do to resist purchasing. Respondents have uniformly ignored all written instructions received from their mailees not to send further shipments.[27]

Respondents' broad argument in opposition to paragraph 9 comes dangerously close to a contention that without the deception implicit in their sending of unordered merchandise they cannot stay in business. If this were so our only alternative would be to prohibit them

[27] *E.g.*, CX 41, 47, 51, 53; Tr. 96, 103, 108, 110 and record citations cited in ID F. 28 and 30.

from making any sales to any of their customers by shipping unordered merchandise. Indeed respondents' entire mode of selling comes so close to be inherently tainted with deception and coercion that it is difficult not to prohibit them absolutely from using this sales technique with any of their customers just as we did in *S & S Pharmaceutical Co., Inc.*, Docket 8696, Opinion and Order, October 9, 1967 [72 F.T.C. 765]. Because of our belief that in this case a lesser remedy will suffice to halt the deception, we have not taken this step. We are mindful that small businesses like respondents cannot always afford either the catalogue method of selling or a door-to-door sales force. Moreover, in this case, in contrast to *S & S*, the recipients are not commercial entities and the shipments are relatively small in size and dollar amount and capable of being returned or ignored without undue burden on the recipient. Finally, the instant case does not have the added refinement of the *S & S* case in which the respondents sought to add to the coercion of their retail customers to purchase the merchandise by placing advertisements in the local newspaper without the retailer's permission advising customers that these drugs were available at the retailer's establishment. Accordingly, we have determined that with the exception of the category of mailees who are the subject of paragraph 9 of the order respondents should have the opportunity to demonstrate that this type of unsolicited shipment sales technique can be carried out vis-a-vis the general public without deception and coercion.

Paragraph 9, in our judgment, is an essential provision in this order if respondents are to be prevented in the future from continuing their deceptive and coercive practices.

Both counsel supporting the complaint and respondents' counsel ask us to make various other clarifying and substantive modifications of the language of the order proposed by the examiner. We will deal with each of these arguments seriatim.

Counsel supporting the complaint contends that the use of the word "exact" in paragraph 6 of the order to modify both payment for and return of the merchandise is inappropriate because one does not "exact" a return of merchandise. Accordingly, counsel fears that this paragraph of the order might be read in the future as requiring the affirmative disclosure to be made solely in the event of demands for payment and not in the event of demands for return of the merchandise. Respondents made no response in their brief to complaint counsel's contention in this respect. While we think the meaning and intent of the paragraph is quite clear as presently written, nevertheless, we will change the word "exact" to "obtain" to remove any possible confusion.

Respondents' counsel takes objection to the use of the word "innuendo" in paragraphs 1 and 2 of the order prohibiting misrepresentations, either directly or by implication, of the legal relationship between respondents and their mailees. Complaint counsel urge that the prohibition must include the term "innuendo" because of the fact that respondents have used innuendo to disparage the character of their mailees as one of their techniques to create the impression that their mailees are under some obligations vis-a-vis this merchandise. Complaint counsel has not demonstrated, however, that there is any difference between a prohibition which applies to a misrepresentation made "by implication or by innuendo," and one which applied simply to misrepresentations made by implication. We are not persuaded that the use of the word "innuendo" adds anything to the prohibition. Consequently we are eliminating the words "by innuendo" on the sole ground that they are redundant, and therefore, unnecessary.

Respondents also object to the use of the words "subterfuge" and "scheme" in paragraphs (4) and (5) of the order which prohibit respondents from "resorting to any subterfuge, scheme, or coercion to sell their merchandise to persons" with whom they have never had any previous business dealings or who have indicated they do not desire to purchase. Respondents argue that the examiner made no findings that respondents had been using any subterfuge or scheme and that there is no evidence of either in the record. Additionally, they argue that the use of the word "scheme" would prohibit them from using both legitimate sales programs as well as those which might be deceptive.

Counsel supporting the complaint argues that the prohibition must include the acts of coercion and subterfuge but agrees to the deletion of the word "scheme" in these paragraphs because it is surplus and therefore unnecessary.

We agree that use of the word "scheme" here might prevent respondents from engaging in a legitimate sales program to sell its stamps and hence are deleting it. While the examiner did not use the word "subterfuge" in his findings, there is no question, based on our own view of the case and of the findings of the examiner that the respondents have misrepresented the legal relationship between themselves and recipients of their unordered mechandise by implying the existence of a legal relationship where none exists and utilizing threats, intimidation, harassment and coercion to reinforce this misrepresentation. This certainly is resort to subterfuge. We do not agree, therefore, with respondents that the words "subterfuge" and "coercion" are surplusage or unsupported by the record and believe that they are essential to the delineation of the prohibition intended.

However, we have a more fundamental objection to these two paragraphs grounded on their limitation to two categories of mailees. We see no basis in the facts or in the law of this case to limit these prohibitions to these two categories of mailees. The obvious implication of such a limitation as is contained in these paragraphs is that resorting to coercion or subterfuge is permissible in sales to persons with whom respondents have previously dealt. Such a limitation in the scope of the order flies in the face of our findings and conclusion in this case. Accordingly, we have combined these two paragraphs into a single paragraph, which prohibits respondents from using subterfuge or coercion in making any sales to any of its mailees. The balance of the paragraphs in the order have been renumbered accordingly.

Respondents urge that paragraph 7 of the order be amended so that it prohibits respondents from representing that accounts will be referred to third persons for collection or other legal action when respondents "do not have a bona fide present intention to do so" instead of as now prohibiting such representations when they are "contrary to the fact." Respondents contend the requested modification is made in the interest of clarity and elimination of ambiguity.

We agree with complaint counsel that this proposed modification would create ambiguity and place an impossible burden on the Commission in any enforcement proceeding to establish what was respondents' "present bona fide intention" at the moment of making the prohibited misrepresentation. We believe that the wording proposed by the hearing examiner will be least productive of misunderstanding and we will therefore leave the language as the examiner has proposed it.

The appeal of complaint counsel is granted and the appeal of respondents' counsel is granted in part and denied in part.

The Findings and Conclusions of the hearing examiner to the extent they conflict with this opinion are overruled. The hearing examiner's order is modified. An appropriate order will be entered.

Commissioner Nicholson did not participate for the reason that oral argument was heard prior to his taking the oath of office.

Final Order

This matter having been heard by the Commission upon cross appeals of respondents and complaint counsel from the hearing examiner's initial decision and upon briefs and oral argument in support of and in opposition to said appeals; and

The Commission having determined for the reasons stated in the accompanying opinion that the appeal of counsel supporting the complaint should be granted and that respondents' appeal should be granted in part and denied in part; that Finding 23 should be modified by striking the last sentence thereof, that Finding 29 should be modified by striking the first two sentences thereof, and that the initial decision, as modified and supplemented to conform to the views expressed in the accompanying opinion should be adopted as the decision of the Commission; and that the order contained in the initial decision should be modified to read as follows:

ORDER

It is ordered, That respondents Joseph L. Portwood and Betty Portwood, individually and trading and doing business as The Portwood Company, or under any other trade name or names, or through any corporate or other device, their agents, representatives, or employees, in connection with stamps, philatelic supplies, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Misrepresenting, directly or by implication, the legal relationship, if any, that exists between respondents and the mailees to whom respondents send their philatelic stamps, philatelic supplies, or other merchandise;

(2) Misrepresenting, directly or by implication, the legal obligation, if any, that exists between respondents and the mailees to whom respondents send their philatelic stamps, philatelic supplies, or other merchandise;

(3) Using threats, intimidation, or coercion (including the threat of legal action) to compel respondents' mailees to perform any act or to refrain from any act that such mailees are under no legal obligation to perform or to forego;

(4) Resorting to any subterfuge or coercion to sell their merchandise;

(5) Sending any communication (including bills, invoices, reminders, letters, or notices) to, or making any demands or requests of, any person that seeks to obtain payment for or the return of merchandise sent without a prior express written request by the recipient, unless such communication clearly and conspicuously states all of the following:

(a) That the merchandise is being sent to the recipient unsolicited,

(b) That the recipient is under no obligation either to return the merchandise to the sender, or to preserve it intact, and

(c) That he is required to pay for the merchandise only if he decides to purchase it.

(6) Representing, directly or by implication, contrary to the fact, that respondents will refer "accounts" to any other organization, attorney, or firm of attorneys for collection or for legal action;

(7) Misrepresenting in any manner the legal consequences of their mailees' failure to pay for or return merchandise that has been sent to said mailees without a prior order therefor or in spite of specific directions from said mailees not to send such merchandise; and

(8) Sending merchandise without first obtaining a specific order therefor after respondents have been notified by the mailees that shipments of unordered merchandise are to be discontinued.

It is ordered, That the hearing examiner's initial decision and order, as modified hereby, be, and they hereby are, adopted as the decision and order of the Commission.

It is further ordered, That respondents shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

Commissioner Nicholson not participating for the reason that oral argument was heard prior to his taking the oath of office.

IN THE MATTER OF

JEWELL MYERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-1290. Complaint, Jan. 22, 1968—Decision, Jan. 22, 1968

Consent order requiring a Memphis, Tenn., retail furrier to cease falsely advertising and deceptively invoicing its fur products and failing to maintain required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority